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TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1932

No. 792

DAVID BURNET, COMMISSIONER OF INTERNAL REVENUE, PETITIONER

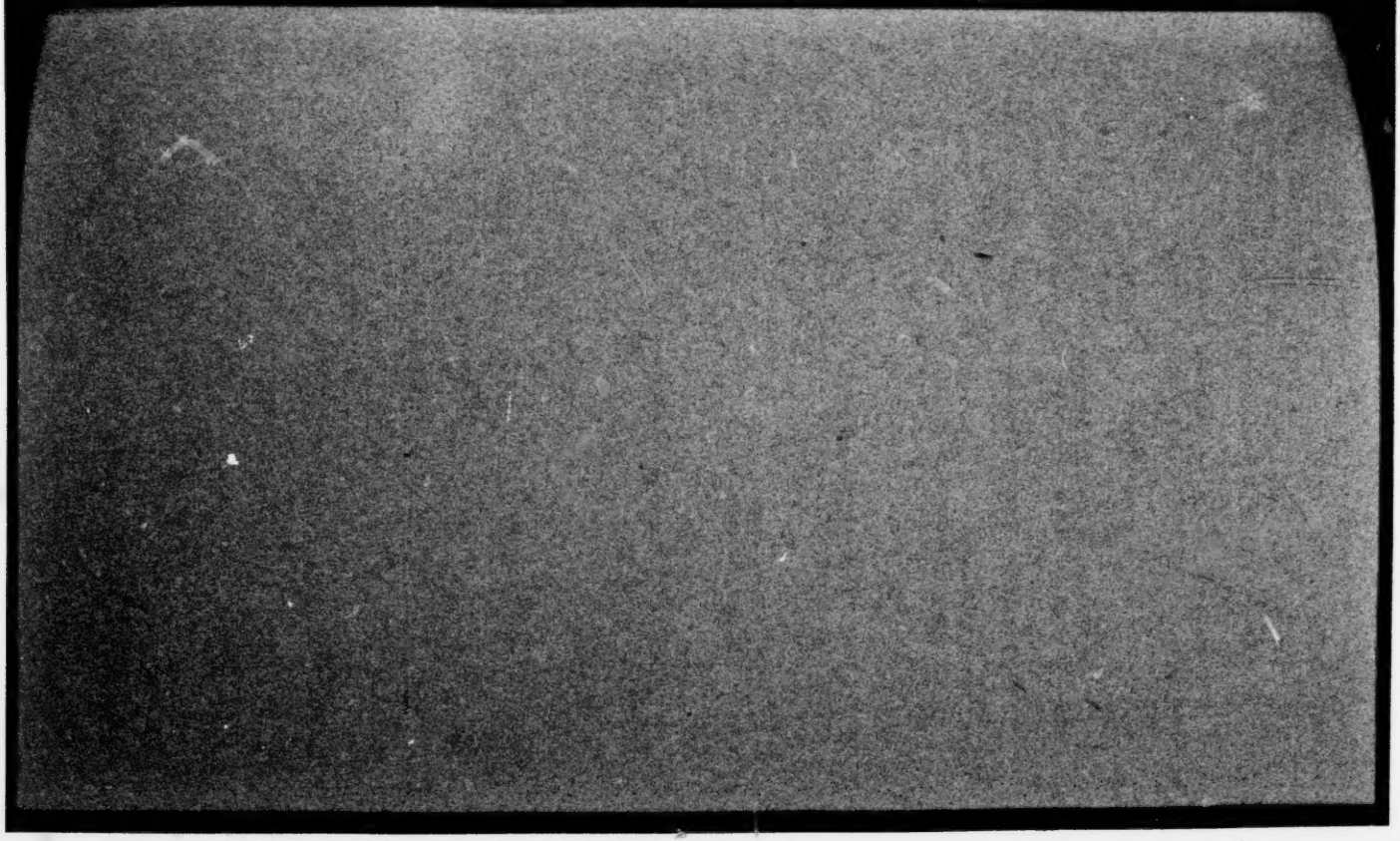
vs.

FREDERICK B. WELLS

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT

PETITION FOR CERTIORARI FILED MARCH 30, 1933
CERTIORARI GRANTED MARCH 27, 1933

(37489)



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A [Caption omitted.]

1a Before United States Board of Tax Appeals

FREDERICK B. WELLS, PETITIONER

vs.

COMMISSIONER OF INTERNAL REVENUE, RESPONDENT

Docket Nos. 29159, 36459, 40915

Order extending time to file record to April 8, 1931

Upon motion of counsel for petitioner and consent of counsel for the respondent, it is

Ordered that the time for preparation of the evidence and for transmission and delivery of the record sur petition for review of the above-entitled proceeding in the United States Circuit Court of Appeals for the Eighth Circuit be and it is hereby extended to April 8, 1931.

Dated, Washington, D.C., March 21, 1931.

(Signed) LOGAN MORRIS,
Member.

A true copy.
Teste:
[SEAL]

B. D. GAMBLE,
Clerk, U.S. Board of Tax Appeals.

(Endorsed:) Filed in U.S. Circuit Court of Appeals on April 6, 1931.

Before United States Board of Tax Appeals

Docket No. 29159

FREDERICK B. WELLS, PETITIONER

vs.

COMMISSIONER OF INTERNAL REVENUE, RESPONDENT

Docket entries

Appearances: for petitioner, J. B. Templeton, Esq., J. S. Y. Ivins, Esq.; for respondent, H. F. Gibbs, Esq., H. D. Thomas, Esq., A. H. Fast, Esq.

2a 1927

June 15—Petition received and filed. Taxpayer notified.
June 16—Copy of petition served on General Counsel.
Aug. 15—Motion for extension to Sept. 15, 1927, to answer filed by General Counsel.
Aug. 16—Granted. Both sides notified.

Sept. 15—Answer filed by General Counsel.
Sept. 16—Copy of answer served on taxpayer—General Calendar.

1929

Feb. 6—Hearing set March 19, 1929.
Feb. 18—Motion to postpone hearing for period of 60 days, filed by taxpayer. Granted to May 20, 1929.
Apr. 20—Motion to postpone hearing for period of 60 days, filed by taxpayer from 5/20/29.
Apr. 23—Motion denied.
May 10—Motion for continuance to 6/20/29 and consolidate with 36459 and 40915 filed by General Counsel.
May 20—Hearing had before Wm. R. Green, division 13, on Commissioner's motion to consolidate and continue. Granted and continued to June 20, 1929.
May 20—Order of consolidation with 36459 and 40915 and continued to June 20, 1929, entered.
June 8—Motion to place on the Reserve Calendar filed by General Counsel. 6/11/29 granted.
Aug. 2—hearing set 10/3/29.
Oct. 3—Hearing had before Mr. Morris, division 14. Consolidated with 36459 and 40915. Stipulation of facts filed. Briefs due 12/1/29.
Oct. 7—Transcript of hearing 10/3/29 filed.
Nov. 29—Brief filed by taxpayer.

1930

May 28—Findings of fact and opinion rendered, division 14, Mr. Morris. Decision will be entered under Rule 50.
3a Aug. 6—Notice of settlement filed by General Counsel.
Aug. 8—Hearing set Aug. 27, 1930, under rule 50.
Aug. 21—Alternative recomputation of deficiency filed by taxpayer.
Aug. 27—Hearing had before Mr. Morris, division 14, on settlement, rule 50.
Aug. 29—Transcript of hearing Aug. 27, 1930 filed.
Sept. 20—Brief on alternative recomputation filed by taxpayer.
Oct. 22—Decision entered—Logan Morris, division 14.
Dec. 31—Notice of appearance of J. S. Y. Ivins as associate counsel for taxpayer filed.
Dec. 31—Motion to fix amount of bond at $21,000 approved and filed.

1931

Jan. 26—Notice of appearance of Kingman Brewster filed.
Jan. 26—Supersedeas bond in the amount of $21,000 approved and ordered filed.
Jan. 26—Petition for review by U.S. Circuit Court of Appeals (8) with assignments of error filed by taxpayer.
Jan. 26—Proof of service filed.

Mar. 20—Motion for enlargement of time to 4/8/31 filed.
Mar. 21—Order enlarging time to Apr. 8, 1931, for preparation of evidence and delivery of record entered.
Mar. 28—Praecipe with proof of service thereon filed.
Mar. 28—Agreed narrative statement of evidence lodged.
Mar. 30—Agreed narrative statement of evidence approved and ordered filed.

Before United States Board of Tax Appeals

Docket No. 36459

FREDERICK B. WELLS, PETITIONER

vs.

COMMISSIONER OF INTERNAL REVENUE, RESPONDENT

Docket entries

For petitioner: J. B. Templeton, Esq., J. S. Y. Ivins, Esq.; for respondent: H. D. Thomas, Esq., A. H. Fast, Esq., W. F. Gibbs, Esq.

4a 1928
Mar. 15—Petition received and filed. Taxpayer notified. (Fee paid.)
Mar. 16—Copy of petition served on General Counsel.
May 15—Answer filed by General Counsel.
May 17—Copy of answer served on taxpayer—General Calendar.

1929
May 10—Motion to consolidate with 29159 and 40915 and for continuance to 6/20/29 filed by General Counsel. See 29159.
May 20—Hearing had before Wm. R. Green—Motion to consolidate granted.
May 20—Order continuing to June 20, 1929, and consolidating with 29159 and 40915 entered.
June 8—Motion to place on the Reserve Calendar filed by General Counsel. See 29159. 6/11/29 granted.
Aug. 2—Hearing set 10/3/29.
Oct. 3—Hearing had before Mr. Morris—Consolidated with 29159 and 40915. Briefs due 12/1/29. Stipulation of facts filed.
Oct. 7—Transcript of hearing 10/3/29 filed.
Nov. 29—Brief filed by taxpayer. See 29159.

1930
May 28—Findings of fact and opinion rendered—Judge Morris, division 14. Decision will be entered under rule 50.

Aug. 6—Notice of settlement filed by General Counsel.
Aug. 8—Hearing set Aug. 27, 1930, under rule 50.
Aug. 21—Alternative recomputation of deficiency filed by taxpayer.
Aug. 27—Hearing had before Mr. Morris on settlement rule 50—Contested.
Aug. 29—Transcript of hearing 8/27/30 filed.
Sept. 20—Brief on alternative recomputation of deficiency filed by taxpayer.
5a Oct. 22—Decision entered—Logan Morris, division 14.
Dec. 31—Notice of the appearance of J. S. Y. Ivins, counsel for taxpayer filed.
Dec. 31—Motion to fix bond in the amount of $21,000 approved and filed.

1931

Jan. 26—Notice of appearance of Kingman Brewster filed.
Jan. 26—Supersedeas bond in the amount of $21,000 approved and ordered filed.
Jan. 26—Petition for review by U.S. Circuit Court of Appeals (8) with assignments of error filed by taxpayer.
Jan. 26—Proof of service filed.
Mar. 20—Motion for enlargement of time to 4/8/31 to prepare and transmit record filed by taxpayer.
Mar. 21—Order enlarging time to April 8, 1931, for preparation of evidence and delivery of record entered.
Mar. 28—Agreed narrative statement of evidence lodged.
Mar. 28—Præcipe filed. Proof of service thereon.
Mar. 30—Agreed narrative statement of evidence approved and ordered filed.

Before United States Board of Tax Appeals

Docket No. 40915

FREDERICK B. WELLS, PETITIONER

vs.

COMMISSIONER OF INTERNAL REVENUE, RESPONDENT

Docket entries

Appearances: For petitioner, J. B. Templeton, Esq., J. S. Y. Ivins, Esq.; for respondent, H. D. Thomas, Esq., A. H. Fast, Esq., W. F. Gibbs, Esq.

1928

Oct. 5—Petition received and filed. Taxpayer notified. (Fee paid.)
Oct. 6—Copy of petition served on General Counsel.

Dec. 5—Answer filed by General Counsel.
Dec. 7—Copy of answer served on taxpayer—General Calendar.

6a 1929

May 10—Motion to consolidate with dockets 21159 and 36459 and to continue hearing to June 20, 1929.
May 20—Hearing had before W. R. Green. Motion to consolidate granted.
May 20—Order consolidating with 29159 and 36459 for hearing June 20, 1929 entered.
June 8—Motion to place on the Reserve Calendar filed by General Counsel. See 29159. 6/11/29 granted.
Aug. 2—Hearing set Oct. 3, 1929.
Oct. 3—Hearing had before Mr. Morris. Consolidated with 36459 and 29159. Stipulation of facts filed. Briefs due 12/1/29.
Oct. 7—Transcript of hearing Oct. 3, 1929 filed.
Nov. 29—Brief filed by taxpayer. See 29159.

1930

May 28—Findings of fact and opinion rendered—Mr. Morris, division 14. Decision will be entered rule 50.
Aug. 6—Notice of settlement filed by General Counsel.
Aug. 8—Hearing set Aug. 27, 1930 under rule 50.
Aug. 21—Alternative recomputation of deficiency filed by taxpayer.
Aug. 27—Hearing had before Mr. Morris—Division 14, on settlement, rule 50. Contested.
Aug. 29—Transcript of hearing 8/27/30 filed.
Sept. 20—Brief on alternative recomputation of deficiency filed by taxpayer.
Oct. 22—Decision entered—Logan Morris, division 14.
Dec. 31—Notice of the appearance of J. S. Y. Ivins, counsel for taxpayer filed.
Dec. 31—Motion to fix amount of bond at $21,000 approved and filed.

1931

Jan. 26—Notice of appearance of Kingman Brewster filed.
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Jan. 26—Proof of service filed.
Mar. 20—Motion for enlargement of time to 4/8/31 to prepare and transmit record filed by taxpayer.

Mar. 21—Order enlarging time to April 8, 1931, for preparation of evidence and delivery of record entered.
Mar. 28—Agreed statement of evidence lodged.
Mar. 28—Praecipe filed—Proof of service thereon.
Mar. 30—Agreed statement of evidence approved and ordered filed.

Before United States Board of Tax Appeals

[Title omitted.]

Petition of Frederick B. Wells for appeal in cause no. 29159

Filed June 15, 1927

The above-named petitioner hereby petitions for a redetermination of the deficiency set forth by the Commissioner of Internal Revenue in his notice of deficneicy (IT: PA: PYA-60D WSL) dated April 19, 1927, and as a basis of this proceeding alleges as follows:

Jurisdiction of the board

A. The petitioner is an individual with office at 312 Chamber of Commerce, Minneapolis, Minnesota.

B. The notice of deficiency (a copy of which is attached and marked " Exhibit A") was mailed to the petitioner on April 19, 1927.

C. The taxes in controversy are income taxes for the calendar year 1924 and for forty-eight hundred nine dollars and thirty-seven cents ($4,809.37).

Assignments of error

D. The determination of tax set forth in the said deficiency is based upon the following errors:

8a (1) The Commissioner, in determining the net income of the taxpayer for the said calendar year 1924, included the net income of five irrevocable trusts which the taxpayer had created prior to the enactment of said act, the income of which was or might be applied to the payment of premiums upon policies of insurance on the life of the grantor (taxpayer) who had divested himself of all rights, interests, and benefits under said policies, the said action of the Commissioner being contrary to the intent of section 219 (h) and other provisions of the Revenue Act of 1924.

(2) In the event that it is held that the taxpayer is subject to tax on any part of the income of said trusts in accordance with section 219 (h) of the Revenue Act of 1924 then the taxpayer furthers avers that said section is unconstitutional so far as it relates to the inclusion in the taxable net income of the grantor of any part of the income of a trust which is or may be applied to the payment of premiums upon policies of insurance on the life of the grantor.

Statement of facts

E. The facts upon which the taxpayer relies as the basis of this proceeding are as follows:

(1) Prior to the enactment of the Revenue Act of 1924 the taxpayer created five irrevocable trusts, the income of which was to be used for the purpose of paying premiums upon policies of insurance on his life. The Commissioner in computing the said deficiency included dividends received by the said trusts amounting to $16,132.95 in the gross income of the grantor for said calendar year 1924 and allowed a deduction therefrom of $326.23 on account of said trusts. The taxpayer omitted this income from his return for said years as the trustees of said trusts reported said income as taxable to them as trustees.

Trust created by taxpayer December 30, 1922

(2) (a) On December 30, 1922, the taxpayer irrevocably assigned 1,000 shares of the preferred capital stock of the Wells Securities Company, par value of $100,000.00, to the Minneapolis Trust Company, trustee.

(b) The income from said trust estate, and so much of the trust estate as may be necessary, is to be used to pay the annual net premiums on a life insurance policy written upon the life of the taxpayer for $100,000.00 with the Minneapolis Trust Company as trustee, beneficiary. The income in excess of the sum necessary
9a to pay the first and successive premiums is to be retained until an amount has been accumulated to pay one additional net annual premium, the balance, in the discretion of the trustee, to be paid to the daughter of grantor, at end of each year.

(c) Upon the death of the grantor, the proceeds of said life insurance policy are to become part of the trust estate, and the net income is to be paid to said daughter as long as she shall live, and upon her death said trust estate is to be distributed to persons designated by her to receive it, or if she leaves no will, to her issue, and if she leaves no issue, to her brothers when the youngest reaches the age of twenty-five years.

(d) The said insurance policy was written at the same time said trust was created.

(e) The Minneapolis Trust Company, as trustee, has all the rights under the said insurance policy, the tax payer having retained no right in or control over said policy, and having no interest in the cash value or loan value thereof, nor the right to change the beneficiary of said policy. Under the trust agreement the trustee is given full power and authority to deal with the said Insurance Company and with the said insurance in any manner that it may deem for the best interests of such Minneapolis Trust Co., as trustee, and may borrow money thereon, or may avail itself of any of the conditions, privileges or benefits provided by the terms of the said policy of life insurance.

(f) The taxpayer is not in any sense a beneficiary of said trust.

(g) The taxpayer did not retain any right to revoke, in whole or in part, either alone or in conjunction with some other person, the said trust or provisions of the said insurance policy.

(h) The taxpayer did not receive, either constructively or actually, any part of the net income of said trust during the said calendar year 1924.

Trust created by taxpayer December 30, 1922

(3) (a) On December 30, 1922, the taxpayer irrevocably paid, transferred, and assigned $450 in cash and 75 shares of the preferred capital stock of the Wells Securities Company, par value of $7,500, to the Minneapolis Trust Co. and Leontine Lindstrom, as trustees.

(b) The annual net income of the trust estate, or so much as
10a may be necessary, is to be used to pay the annual net premiums on a life insurance policy upon the life of the taxpayer for $10,000 with the said trustee as beneficiaries, and if the income is not sufficient then the additional amount necessary to pay the premiums shall be taken from the principal.

(c) Upon the death of the taxpayer the securities placed in the said trust estate, or the securities held in lieu thereof and purchased with the proceeds of the sale thereof, are to be paid over and delivered to the Minneapolis Foundation for charitable purposes; and the trustees are to collect the proceeds of the life insurance policy from the insurance company, and to invest and reinvest the same, disbursing, however, the income upon the investment of the proceeds of the life insurance policy, and so much of the principal thereof from time to time as may, in their discretion, be necessary for the support, maintenance and education of Shirley Irene Lindstrom, niece of the said Leontine Lindstrom, cotrustee, and when the said Shirley Irene Lindstrom shall reach the age of 21 years, to pay over to her the entire trust estate then remaining. In the event the said Shirley Irene Lindstrom shall predecease the grantor then the trust shall fail and determine upon her death, and the Trustees shall forthwith surrender the life insurance policy for cancellation, collect its cash surrender value and pay the same over to the Minneapolis Foundation, not for its own use and benefit, however, but upon the trusts defined in the said agreement. In the event the grantor shall be living when the said Shirley Irene Lindstrom attains the age of 21 years then the trust shall cease and determine and the Trustees shall forthwith surrender the said policy of insurance for cancellation, collect its cash surrender value and pay the same over to the said Shirley Irene Lindstrom.

(d) The said insurance policy was written at the same time the said trust was created.

(e) The Minneapolis Trust Company and Leontine Lindstrom, as cotrustees, have all the rights under the said insurance policy, the

taxpayer having retained no right in or control over said policy and having no interest in the cash value or loan value thereof, nor the right to change the beneficiary of said policy. Under the trust agreement the trustees are given full power and authority to deal with the insurance company and with the said insurance in any manner that it may deem for the best interests of the said Minneapolis Trust Company and Leontine Lindstrom, cotrustees, and may borrow money thereon, or may avail themselves of any of the conditions, privileges or benefits provided by the terms of the said policy of life insurance.

11a (f) The taxpayer is not in any sense a beneficiary of said trust.

(g) The taxpayer did not retain any right to revoke, in whole or in part, either alone or in conjunction with some other person, the said trust or provisions of the said insurance policy.

(h) The taxpayer did not receive, either constructively or actually, any part of the net income of said trust during the said calendar year 1924.

Trust created by taxpayer December 30, 1922

(4) (a) On December 31, 1922, the taxpayer irrevocably paid, transferred, and assigned $3,550 in cash and 625 shares of the preferred capital stock of the Wells Securities Company, par value $62,520, to the Minneapolis Trust Company, as trustee.

(b) The net annual income of the trust estate, or so much as may be necessary, and in the event the same is not sufficient, such part of the trust estate as may be necessary for such purpose, shall be used to pay the net annual premiums on four life insurance policies aggregating $77,095 written upon the life of the taxpayer for the benefit of certain persons. Any income from the trust estate in excess of the sum necessary to pay the said annual premiums shall be retained to pay the premiums in years when the trust estate shall not have sufficient income.

(c) Upon the death of the taxpayer, or upon the happening of the contingency, when during the life of the grantor the premiums on the four insurance policies shall cease to be demanded or paid, by reason of the fact that all of the beneficiaries named under the four policies shall predecease him, or otherwise, then, and in that event, the trustee shall forthwith deliver over to the Minneapolis Foundation the entire trust estate then in its possession, for the charitable purposes named in the said trust agreement.

(d) The said insurance policies were written at the same time the said trust was created.

(e) The taxpayer retained no right in or control over the said policies and has no interest in the cash values and loan values thereof, nor the right to change the beneficiaries of the said policies. Under the trust agreement the trustee is given full power and authority to deal with the Insurance Company and with the said

12a insurance in any manner that it may deem for the best interests of the beneficiaries, and may borrow money thereon, or may avail itself of any of the conditions, privileges, or benefits provided by the terms and conditions of the said policies of insurance.

(f) The taxpayer is not in any sense a beneficiary of said trust.

(g) The taxpayer did not retain any right to revoke, in whole or in part, either alone or in conjunction with some other person, the said trust or provisions of the insurance policies.

(h) The taxpayer did not receive, either constructively or actually, any part of the net income of the said trust during the calendar year 1924.

Trust created by taxpayer August 6, 1923

(5) (a) On August 6, 1923, the taxpayer irrevocably transferred and assigned 1,000 shares of the preferred capital stock of the Wells Securities Company, par value of $100,000, to the Minneapolis Trust Company, as trustee.

(b) The income from the trust estate, and so much of the trust estate as may be necessary, is to be expended by the trustee to pay the annual net premiums on life insurance policies aggregating $174,597 and accident insurance policies aggregating $49,600 written upon the life of the taxpayer with the Minneapolis Trust Company as trustee, beneficiary. Income in excess of the sum necessary to pay the first and successive premiums is to be retained until a sum has been accumulated equal to the amount necessary to pay two successive annual premiums upon all of the said insurance policies, and any accumulation in excess of this amount shall be distributed to the children of the grantor in the proportion that they shall ultimately receive the income from the said trust estate.

(c) Upon the death of the taxpayer, the trustee is to collect the proceeds of the said insurance policies and add same to the trust estate. The income from the then trust estate is to be paid to the children of the taxpayer as follows: The income on $225,000 equally to the three sons of the grantor and the balance of income equally to his three sons and daughter, so long as they or each of them shall live, with power to the trustee, in its discretion, upon advice of a parent or guardian, to withhold the income from any or all of his sons until he, or they, shall have attained the age of 30 years.

13a Upon the death of each of the grantor's sons, $75,000 in cash or securities, plus one fourth of the residue of the trust estate over and above $225,000 in value, shall be paid over, or delivered, by the trustee to such person or persons as such deceased son shall have designated by will to receive it, and the appointment failing, to such person or persons as are entitled to receive it under the laws of descent then in effect in the State of Minnesota. Upon the death of the daughter of the grantor, one fourth of the residue of the said

estate over and above the sum of $225,000 in cash or securities, shall likewise be paid over, or delivered to such persons as she shall designate, and the appointment failing, to such persons as are entitled to receive the same under the statutes of descent in effect in the State of Minnesota at the time of her death.

(d) The said insurance policies were written a number of years previous to the creation of said trusts, and had been previously irrevocably assigned to Mary Drew Wells, wife of the taxpayer, who irrevocably assigned them to the Minneapolis Trust Company, as trustee, to make them part of the said trust estate. The said Mary Drew Wells had previously paid the premiums herself on some of these policies from her own funds. The grantor had no rights under, or interest in, the said insurance policies previous to the creation of the said trust estate, and none whatsoever after the trust estate was created. Under the trust agreement the trustee is given full power and authority to deal with the Insurance Company and with the said insurance in any manner that it may deem for the best interests of the beneficiaries, and may borrow money thereon, or avail itself of any of the conditions, privileges, or benefits provided by the terms and conditions of the said policies of insurance.

(e) The taxpayer is not in any sense a beneficiary of said trust.

(f) The taxpayer did not retain any right to revoke, in whole or in part, either alone or in conjunction with some other person, the said trust or provisions of the insurance policies.

(g) The taxpayer did not receive, either constructively or actually, any part of the net income of the said trust during the calendar year 1924.

Trust created by taxpayer August 6, 1923

(6) (a) On August 6, 1923, the same date as the trust agree-
14a ment heretofore mentioned, the taxpayer irrevocably transferred and assigned 1,000 shares of the preferred capital stock of the Wells Securities Company, par value $100,000, to the Minneapolis Trust Company, as trustee.

(b) The income from the trust estate, and so much of the trust estate as may be necessary, is to be expended by the trustee to pay the net annual premiums on life insurance policies aggregating $170,000 and accident insurance policies aggregating $54,800 written upon the life of the taxpayer with the Minneapolis Trust Company, as trustee, beneficiary. Income in excess of the sum necessary to pay the first and successive premiums is to be retained until a sum has been accumulated equal to the amount necessary to pay two successive annual premiums upon all of the said insurance policies, and any accumulation in excess of this amount shall be destributed to the children of the grantor in the proportion that they shall ultimately receive the income from the said trust estate.

(c) The provisions of said trust agreement and facts of said trust and insurance policies are the same as stated in paragraphs (5) (d) to (5) (g) inclusive with reference to the other trust created on the same date.

7. The taxpayer in creating said trusts divested himself of all interest, right, title, and control which he had in said shares of stock and insurance policies.

F. Wherefore, the petitioner prays that this Board may hear the proceeding and determine that no part of the income received by the said trusts is to be included in the taxable net income of the taxpayer for the year 1924; that in the event it is determined that any part of the income received by said trusts is taxable to the grantor, section 219 (h) of the Revenue Act of 1924 so far as it relates to the inclusion in the taxable net income of the grantor of any part of the income of a trust which is or may be applied to the payment of premiums upon policies of insurance on the life of the grantor, is unconstitutional; that there is no deficiency due from the petitioner for the year 1924.

(Signed) J. B. TEMPLETON,
Counsel for Petitioner,
312 Chamber of Commerce, Minneapolis, Minn.

[*Duly sworn to by Frederick B. Wills, jurat omitted in printing.*]

15a *Exhibit A to petition*

TREASURY DEPARTMENT,
Washington, April 19, 1927.

IT:PA:PYA-60D
WSL
Mr. FREDERICK B. WELLS,
312 Chamber of Commerce Building, Minneapolis, Minnesota.

SIR: The determination of your income-tax liability for the year 1924, as set forth in office letter dated November 3, 1926, in which a deficiency in tax of $4,809.37 was disclosed for that year, is sustained by the Bureau. The adjustments are shown in the attached statement.

In accordance with the provisions of section 274 of the Revenue Act of 1926, you are allowed 60 days from the date of mailing of this letter within which to file a petition for the redetermination of this deficiency. Any such petition must be addressed to the United States Board of Tax Appeals, Earle Building, Washington, D. C., and must be mailed in time to reach the Board within the 60-day period, not counting Sunday as the sixtieth day.

Where a taxpayer has been given an opportunity to file a petition with the United States Board of Tax Appeals and has not done so within the 60 days prescribed and an assessment has been made, or where a taxpayer has filed a petition and an assessment in accordance with the final decision on such petition has been made, the

unpaid amount of the assessment must be paid upon notice and demand from the collector of internal revenue. No claim for abatement can be entertained.

16a If you acquiesce in this determination and do not desire to file a petition with the United States Board of Tax Appeals, you are requested to execute a waiver of your right to file a petition with the United States Board of Tax Appeals on the enclosed Form a, and forward it to the Commissioner of Internal Revenue, Washington, D. C., for the attention of IT:PA:PYA-60D-WSL. In the event that you acquiesce in a part of the determination, the waiver should be executed with respect to the items to which you agree.

Respectfully,

D. H. BLAIR, *Commissioner.*
By C. R. NASH,
Assistant to the Commissioner.

Inclosures:
Statement.
Form A.
Form 882.

IT:PA:PYA-60D
WSL

Statement

In re: Mr. Frederick B. Wells,
312 Chamber of Commerce Building,
Minneapolis, Minnesota.

APRIL 19, 1927.

Year 1924. Deficiency in tax, $4,809.37.

The report of the internal revenue agent in charge at St. Paul, Minnesota, dated October 29, 1925, has been reviewed and approved.

Dividends amounting to $16,132.95 have been included in your net income and a loss of $326.23 has been deducted therefrom, these amounts representing the net income derived and loss sustained by certain trusts created by you. In accordance with the Revenue Act of 1924 if any part of the income of a trust is or may be applied to the payment of premiums upon policies of insurance on the life of the grantor except policies of insurance irrevocably payable as contributions or gifts, such part of the income of the trust shall be included in computing the net income of the grantor. The income of such trust must be so included whether or not the trust was created before the enactment of this act.

17a The deduction on account of contributions has been increased to 15% of the total net income exclusive of the amount allowable on account of that item.

Your return as adjusted follows:

Salaries		$54,123.54
Profit on sale of stock		2,136.25
Income from trusts (loss)		326.23
Dividends		97,067.95
Other income		987.00
Interest		52.50
Total		$154,041.01
Less:		
Interest	$6,399.90	
Taxes	858.84	
Contributions	22,761.96	30,020.70
Balance		$124,020.31
Balance brought forward		$124,020.31
Capital net gain		4,964.12
Total net income		$128,984.43
Less:		
Personal exemption	$2,500.00	
Dividends	97,067.95	99,567.95
Balance		$24,452.36
Normal tax at 2%		$80.00
Normal tax at 4%		160.00
Normal tax at 6% on $16,452.36		987.14
Surtax		25,907.51
Tax on capital net gain		620.52
Total		$27,755.17
Earned income credit		55.00
Total tax liability		$27,700.17
Tax assessed		22,890.80
Deficiency in tax		$4,809.37

18a Careful consideration has been given to the information submitted in your protest against the inclusion in your individual income tax return of the income derived and loss sustained in 1924 from trusts created by you for the purpose of payment of premiums upon policies of insurance on your life.

Section 219 (h) of the Revenue Act of 1924 reads as follows:

"Where any part of the income of a trust, may in the discretion of the grantor of the trust, either alone or in conjunction with any person not a beneficiary of the trust, be distributed to the grantor or be held or accumulated for future distribution to him, or where any part of the income of a trust is or may be applied to the payment of premiums upon policies of the insurance on the life of the grantor (except policies of insurance irrevocably payable for the purposes and in the manner specified in paragraph (10) of subdivision (a) of section 214), such part of the income of the trust shall be included in computing the net income of the grantor."

It is held that the provisions of the section quoted above apply to the income of any trust whose income is or may be applied for the purpose indicated. The fact that the trust in the instant case

was irrevocable and that the grantor was not and could not be a beneficiary under these life insurance policies does not justify the conclusion that the income of these trusts was not taxable to the grantor. The premiums on the life insurance policies on the life of the grantor had to be paid in order to keep the policies in force. Had not the income of the trusts been used to pay these premiums you would have been required to make the payments from your own funds. In that way you clearly benefitted from the payment from trust income of the insurance policies taken out upon your life. It does not appear that any of the policies here involved were irrevocably payable for purposes set forth in paragraph (10) of subdivision (a) of section 214 (contributions) so that this case does not fall within the exception provided in section 219 (h).

It is held that the income of the five trusts here under consideration was clearly taxable to you under section 219 (h) of the Revenue Act of 1924, the provisions of which are broad and include revocable and irrevocable trusts. The adjustment of your return upon the basis indicated in Bureau letter of November 3, 1926, is therefore sustained.

19a Payment of the tax should not be made until a bill is received from the collector of internal revenue for your district, and remittance should then be made to him.

Before United States Board of Tax Appeals.

[Title omitted.]

Answer of Commissioner of Internal Revenue in cause no. 29159.

Filed Sep. 15, 1927.

The Commissioner of Internal Revenue, by his attorney, A. W. Gregg, General Counsel, Bureau of Internal Revenue, for answer to the petition of the above-named taxpayer, admits and denies as follows:

A. Admits the allegations in said paragraph of the petition.

B. Admits the allegations in said paragraph of the petition.

C. Admits that the taxes in controversy are income taxes for the calendar year 1924 and that the amount of the deficiency is $4,809.37.

E. (1) Admits that prior to the enactment of the Revenue Act of 1924 the taxpayer created five trusts, the income of which was to be used for the purpose of paying premiums upon policies of insurance on his life. Admits that the Commissioner in computing the deficiency included amounts received by the said trusts, amounting to $16,132.95, in the gross income of the grantor for 1924 and allowed a deduction therefrom of $326.23 on account of said trusts. Admits that the taxpayer omitted this income from his return for 1924.

(2) (a) Admits that on December 30, 1922, the taxpayer assigned 1,000 shares of the preferred capital stock of the Wells Securities

Company, par value of $100,000.00, to the Minneapolis Trust Company, trustee.

(b) Admits that the income from said trust estate and so much of the trust estate as may be necessary is to be used to pay the annual net premiums on a life insurance policy written upon the life of the taxpayer for $100,000.00 with the Minneapolis Trust Company as trustee, beneficiary.

20a (d) For want of knowledge or information sufficient to form a belief, denies the allegations contained in subparagraph (2) (d) of paragraph E of the petition.

Neither admits nor denies the remaining allegations of paragraph E (2) contained in subparagraphs (b), (c), (e), (f), and (g) but calls for the production of the trust agreement referred to therein.

(3) (a) Admits that on December 30, 1922, the taxpayer paid, transferred, and assigned $450.00 in cash and 75 shares of the preferred capital stock of the Wells Securities Company, par value of $7,500.00, to the Minneapolis Trust Company and Leontine Lindstrom, as trustee.

(b) Admits the allegations in said paragraph of the petition.

(d) For want of knowledge or information sufficient to form a belief, denies the allegations in said paragraph of the petition.

Neither admits nor denies the remaining allegations of paragraph E (3) contained in subparagraphs (c), (e), (f), and (g) thereof, but calls for the production of the trust agreement referred to therein.

(4) (a) Admits that on December 30, 1922, the taxpayer paid, transferred and assigned $3,550.00 in cash and 625 shares of preferred capital stock of the Wells Securities Company, par value $62,500.00, to the Minneapolis Trust Company, as trustee.

(b) Admits that the net annual income of the trust estate or so much as may be necessary and in the event the same is not sufficient such part of the trust estate as may be necessary for such purpose shall be used to pay the net annual premiums on four life insurance policies upon the life of the taxpayer.

(d) For want of knowledge or information sufficient to form a belief, denies the allegations in said paragraph of the petition.

Neither admits nor denies the remaining allegations of paragraph E (4) contained in subparagraphs (b), (c), (e), (f), and (g) thereof, but calls for the production of the trust agreement referred to therein.

21a (5) (a) Admits that on August 6, 1923, the taxpayer transferred and assigned 1,000 shares of the preferred capital stock of the Wells Securities Company, par value of $100,000.00, to the Minneapolis Trust Company, as trustee.

(b) Admits that the income from the trust estate and so much of the trust estate as may be necessary is to be expended by the trustee to pay the annual net premiums on life insurance policies upon the life of the taxpayer.

(d) For want of knowledge or information sufficient to form a belief, denies the allegations of subparagraph (d), relative to the

date of the insurance policies and the assignments thereof and interests therein prior to creation of the said trust.

Neither admits nor denies the remaining allegations of paragraph E (5) contained in subparagraphs (b), (c), (d), (e), and (f) thereof, but calls for the production of the trust agreement referred to therein.

(6) (a) Admits that on August 5, 1923, the taxpayer transferred and assigned 1,000 shares of the preferred capital stock of the Wells Securities Company, par value $100,000.00, to the Minneapolis Trust Company, as trustee.

(b) Admits that the income from the trust estate and so much of the trust estate as may be necessary is to be expended by the trustee to pay the net annual premiums on life insurance policies written upon the life of the taxpayer.

Neither admits nor denies the remaining allegations of paragraph E (6) contained in subparagraphs (b) and (c) thereof, but calls for the production of the trust agreement referred to therein.

(7) Neither admits nor denies the allegations contained in paragraph (7) but calls for the production of the trust agreements referred to therein.

Denies generally and specifically each and every allegation contained in the taxpayer's petition not hereinbefore admitted, qualified, or denied.

Wherefore, it is prayed that the taxpayer's appeal be denied.

A. W. GREGG,
General Counsel, Bureau of Internal Revenue.

Of counsel:
THOS. P. DUDLEY, Jr.,
Special Attorney, Bureau of Internal Revenue.

22a Before United States Board of Tax Appeals

[Title omitted.]

Petition of Frederick B. Wells for appeal in cause no. 36459

Filed March 15, 1928

The above-named petitioner hereby petitions for a redetermination of the deficiency set forth by the Commissioner of Internal Revenue in his notice of deficiency (IT: FAR: B-2 SB—60D) dated January 19, 1928, and as a basis of this proceeding alleges as follows:

Jurisdiction of the Board

A. The petitioner is an individual with office at 312 Chamber of Commerce, Minneapolis, Minnesota.

B. The notice of deficiency (a copy of which is attached and marked "Exhibit A") was mailed to the petitioner on January 19, 1928.

C. The taxes in controversy are income taxes for the calendar year 1925 and are in amount of three thousand fifty-seven dollars and sixteen cents ($3,057.16).

Assignments of error

D. The determination of tax set forth in the said deficiency is based upon the following error:

(1) The Commissioner erred in including in the taxable net income of the taxpayer the net income of five irrevocable trusts, which the taxpayer had created prior to the enactment of the Revenue Act of 1924, and the net income of which was or might be applied to the payment of premiums upon policies of insurance on the life of the grantor (taxpayer), who had divested himself of all rights, interests, and benefits under said policies.

Statement of facts

E. The facts upon which the taxpayer relies as the basis of this proceeding are as follows:

(1) Prior to the enactment of the Revenue Act of 1924 the taxpayer created five irrevocable trusts, the income of which was to be used for the purpose of paying premiums upon policies of
23a insurance on his life. The Commissioner in computing the said deficiency included dividends received by the said trusts amounting to $16,650.00 in the gross income of the grantor (taxpayer) for said calendar year 1925 and allowed a deduction therefrom of $347.18 on account of said trusts. The taxpayer omitted this income from his return for said year as the trustees of said trusts reported said income as taxable to them as trustees. The facts relating to the said five trusts are given below.

Trust created by taxpayer December 30, 1922

(2) (a) On December 30, 1922, the taxpayer irrevocably assigned 1,000 shares of the preferred capital stock of the Wells Securities Company, par value of $100,000.00, to the Minneapolis Trust Company, trustee.

(b) The income from said trust estate, and so much of the trust estate as may be necessary, is to be used to pay the annual net premiums on a life insurance policy written upon the life of the taxpayer for $100,000.00 with the Minneapolis Trust Company, as trustee, beneficiary. The income in excess of the sum necessary to pay the first and successive premiums is to be retained until an amount has been accumulated to pay one additional net annual premium, the balance, in the discretion of the trustee, to be paid to the daughter of grantor, at end of each year.

(c) Upon the death of the grantor, the proceeds of said life insurance policy are to become part of the trust estate, and the net

income is to be paid to said daughter as long as she shall live, and upon her death said trust estate is to be distributed to persons designated by her to receive it, or if she leaves no will, to her issue, and if she leaves no issue, to her brothers when the youngest reaches the age of twenty-five years.

(d) The said insurance policy was written at the same time said trust was created.

(e) The Minneapolis Trust Company, as trustee, has all the rights under the said insurance policy, the taxpayer having retained no right in or control over said policy, and having no interest in the cash value or loan value thereof, nor the right to change the beneficiary of said policy. Under the trust agreement the trustee is given full power and authority to deal with the said Insurance Company and with the said insurance in any manner that it may deem for the best interests of such Minneapolis Trust Co. as trustee, and may borrow money thereon, or may avail itself of any of the
24a conditions, privileges, or benefits provided by the terms of the said policy of life insurance.

(f) The taxpayer is not in any sense a beneficiary of said trust.

(g) The taxpayer did not retain any right to revoke, in whole or in part, either alone or in conjunction with some other person, the said trust or provisions of the said insurance policy.

(h) The taxpayer did not receive, either constructively or actually, any part of the net income of said trust during the said calendar year 1924.

Trust created by taxpayer December 30, 1922

(3) (a) On December 30, 1922, the taxpayer irrevocably paid, transferred, and assigned $450 in cash and 75 shares of the preferred capital stock of the Wells Securities Company, par value of $7,500, to the Minneapolis Trust Co. and Leontine Lindstrom, as trustees.

(b) The annual net income of the trust estate, or so much as may be necessary, is to be used to pay the annual net premiums on a life insurance policy upon the life of the taxpayer for $10,000 with the said trustees as beneficiaries, and if the income is not sufficient then the additional amount necessary to pay the premiums shall be taken from the principal.

(c) Upon the death of the taxpayer the securities placed in the said trust estate, or the securities held in lieu thereof and purchased with the proceeds of the sale thereof, are to be paid over and delivered to the Minneapolis Foundation for charitable purposes; and the trustees are to collect the proceeds of the life insurance policy from the insurance company, and to invest and reinvest the same, disbursing, however, the income upon the investment of the proceeds of the life insurance policy, and so much of the principal thereof from time to time as may, in their discretion, be necessary for the support, maintenance and education of Shirley Irene Lindstrom, niece of the said Leontine Lindstrom, co-trustee, and when the

said Shirley Irene Lindstrom shall reach the age of 21 years, to pay over to her the entire trust estate then remaining. In the event the said Shirley Irene Lindstrom shall predecease the grantor then the trust shall fail and determine upon her death, and the trustees shall forthwith surrender the life insurance policy for can-
25a cellation, collect its cash surrender value, and pay the same over to the Minneapolis Foundation, not for its own use and benefit, however, but upon the trusts defined in the said agreement. In the event the grantor shall be living when the said Shirley Irene Lindstrom attains the age of 21 years then the trust shall cease and determine and the trustees shall forthwith surrender the said policy of insurance for cancellation, collect its cash surrender value and pay the same over to the said Shirley Irene Lindstrom.

(d) The said insurance policy was written at the same time the said trust was created.

(e) The Minneapolis Trust Company and Leontine Lindstrom, as cotrustees, have all the rights under the said insurance policy, the taxpayer having retained no right in or control over said policy and having no interest in the cash value or loan value thereof, nor the right to change the beneficiary of said policy. Under the trust agreement the trustees are given full power and authority to deal with the Insurance Company and with the said insurance in any manner that it may deem for the best interests of the said Minneapolis Trust Company and Leontine Lindstrom, cotrustees, and may borrow money thereon, or may avail themselves of any of the conditions, privileges, or benefits provided by the terms of the said policy of life insurance.

(f) The taxpayer is not in any sense a beneficiary of said trust.

(g) The taxpayer did not retain any right to revoke, in whole or in part, either alone or in conjunction with some other person, the said trust or provisions of the said insurance policy.

(h) The taxpayer did not receive, either constructively or actually, any part of the net income of said trust during the said calendar year 1924.

Trust created by taxpayer December 30, 1922

(4) (a) On December 31, 1922, the taxpayer irrevocably paid, transferred and assigned $3,550 in cash and 625 shares of the preferred capital stock of the Wells Securities Company, par value $62,500, to the Minneapolis Trust Company, as trustee.

(b) The net annual income of the trust estate, or so much as may be necessary, and in the event the same is not sufficient, such part of the trust estate as may be necessary for such purpose, shall
26a be used to pay the net annual premiums on four life insurance policies aggregating $77,095 written upon the life of the taxpayer for the benefit of certain persons. Any income from the trust estate in excess of the sum necessary to pay the said annual pre-

miums shall be retained to pay the premiums in years when the trust estate shall not have sufficient income.

(c) Upon the death of the taxpayer, or upon the happening of the contingency, when during the life of the grantor the premiums on the four insurance policies shall cease to be demanded or paid, by reason of the fact that all of the beneficiaries named under the four policies shall predecease him, or otherwise, then, and in that event, the trustee shall forthwith deliver over to the Minneapolis Foundation the entire trust estate then in its possession, for the charitable purposes named in the said trust agreement.

(d) The said insurance policies were written at the same time the said trust was created.

(e) The taxpayer retained no right in or control over the said policies and has no interest in the cash values and loan values thereof, nor the right to change the beneficiaries of the said policies. Under the trust agreement the trustee is given full power and authority to deal with the Insurance Company and with the said insurance in any manner that it may deem for the best interests of the beneficiaries, and may borrow money thereon, or may avail itself of any of the conditions, privileges, or benefits provided by the terms and conditions of the said policies of insurance.

(f) The taxpayer is not in any sense a beneficiary of said trust.

(g) The taxpayer did not retain any right to revoke, in whole or in part, either alone or in conjunction with some other person, the said trust or provisions of the insurance policies.

(h) The taxpayer did not receive, either constructively or actually, any part of the net income of the said trust during the calendar year 1924.

Trust created by taxpayer August 6, 1923

(5) (a) On August 6, 1923, the taxpayer irrevocably transferred and assigned 1,000 shares of the preferred capital stock of the Wells Securities Company, par value of $100,000, to the Minneapolis Trust Company, as trustee.

27a (b) The income from the trust estate, and so much of the trust estate as may be necessary, is to be expended by the trustee to pay the annual net premiums on life insurance policies aggregating $174,597 and accident insurance policies aggregating $49,600 written upon the life of the taxpayer with the Minneapolis Trust Company, as trustee, beneficiary. Income in excess of the sum necessary to pay the first and successive premiums is to be retained until a sum has been accumulated equal to the amount necessary to pay two successive annual premiums upon all of the said insurance policies, and any accumulation in excess of this amount shall be distributed to the children of the grantor in the proportion that they shall ultimately receive the income from the said trust estate.

(c) Upon the death of the taxpayer, the trustee is to collect the proceeds of the said insurance policies and add same to the trust

estate. The income from the then trust estate is to be paid to the children of the taxpayer as follows: The income on $255,000 equally to the three sons of the grantor and the balance of income equally to his three sons and daughter, so long as they or each of them shall live, with power to the trustee, in its discretion, upon advice of a parent or guardian, to withhold the income from any or all of his sons until he, or they, shall have attained the age of 30 years. Upon the death of each of the grantor's sons, $75,000 in cash or securities, plus one fourth of the residue of the trust estate over and above $225,000 in value, shall be paid over, or delivered, by the trustee to such person or persons as such deceased son shall have designated by will to receive it, and the appointment failing, to such person or persons as are entitled to receive it under the laws of descent then in effect in the State of Minnesota. Upon the death of the daughter of the grantor, one fourth of the residue of the said trust estate over and above the sum of $225,000 in cash or securities, shall likewise be paid over, or delivered to such persons as she shall designate, and the appointment failing, to such persons as are entitled to receive the same under the Statutes of Descent in effect in the State of Minnesota at the time of her death.

(d) The said insurance policies were written a number of years previous to the creation of said trusts, and had been previously irrevocably assigned to Mary Drew Wells, wife of the taxpayer, who irrevocably assigned them to the Minneapolis Trust Company, as trustee, to make them part of the said trust estate. The said Mary Drew Wells had previously paid the premiums herself on
28a some of these policies from her own funds. The grantor had no rights under, or interest in, the said insurance policies previous to the creation of the said trust estate, and none whatsoever after the trust estate was created. Under the trust agreement the trustee is given full power and authority to deal with the Insurance Company and with the said insurance in any manner that it may deem for the best interests of the beneficiaries, and may borrow money thereon, or avail itself of any of the conditions, privileges or benefits provided by the terms and conditions of the said policies of insurance.

(e) The taxpayer is not in any sense a beneficiary of said trust.

(f) The taxpayer did not retain any right to revoke, in whole or in part, either alone or in conjunction, with some other person, the said trust or provisions of the insurance policies.

(g) The taxpayer did not receive, either constructively or actually any part of the net income of the said trust during the calendar year 1924.

Trust created by taxpayer August 6, 1923

(6) (a) On August 6, 1923, the same date as the trust agreement heretofore mentioned, the taxpayer irrevocably transferred and assigned 1,000 shares of the preferred capital stock of The Wells

Securities Company, par value $100,000, to the Minneapolis Trust Company, as trustee.

(b) The income from the trust estate, and so much of the trust estate as may be necessary, is to be expended by the trustee to pay the net annual premiums on life insurance policies aggregating $170,000 and accident insurance policies aggregating $54,800 written upon the life of the taxpayer with the Minneapolis Trust Company, as trustee, beneficiary. Income in excess of the sum necessary to pay the first and successive premiums is to be retained until a sum has been accumulated equal to the amount necessary to pay two successive annual premiums upon all of the said insurance policies, and any accumulation in excess of this amount shall be distributed to the children of the grantor in the proportion that they shall ultimately receive the income from the said trust estate.

(c) The provisions of said trust agreement and facts of said trust and insurance policies are the same as stated in
29a paragraphs (5) (d) to (5) (g) inclusive with reference to the other trust created on the same date.

7. The taxpayer in creating said trusts divested himself of all interest, right, title, and control which he had in said shares of stock and insurance policies.

F. Wherefore, the petitioner prays that this Board may hear the proceedings and may determine that no part of the income received by the said trusts is to be included in the taxable net income of the taxpayer for the year 1925; and that there is no deficiency due from the said petitioner for the year 1925.

(Signed) J. B. TEMPLETON,
Counsel for Petitioner,
312 Chamber of Commerce, Minneapolis, Minn.

Duly sworn to by Frederick B. Wells, jurat omitted in printing.

Exhibit A to petition

TREASURY DEPARTMENT,
Washington, Jan. 19, 1928.

IT:FAR:B–2
SB–60D
MR. FREDERICK B. WELLS,
312 Chamber of Commerce, Minneapolis, Minnesota.

SIRS: In accordance with section 274 of the Revenue Act of 1926 you are advised that the determination of your tax liability
30a for the years 1925 discloses a deficiency of $3,057.16, as shown in the attached statement.

The section of the law above mentioned allows you an appeal to the United States Board of Tax Appeals within sixty days from the date of the mailing of this letter. However, if you acquiesce in this determination, you are requested to execute the enclosed form A

and forward it to the Commissioner of Internal Revenue, Washington, D.C., for the attention of IT:C:P-7.

Respectfully,

D. H. BLAIR,
Commissioner.
By (Signed) C. B. ALLEN,
Deputy Commissioner.

Enclosures:
Statement.
Form A.
Form 882.

Statement

IT:FAR:B-2
SB-60D

JAN. 19, 1928.

In re: Mr. Frederick B. Wells,
312 Chamber of Commerce,
Minneapolis, Minnesota.

Year 1925, deficiency in tax, $3,057.16.

The report of the internal revenue agent in charge at St. Paul, Minnesota, transmitted to this office on December 28, 1927, has been reviewed and approved.

Net income reported			$99,158.45
Add:			
1. Increased in dividends			16,650.00
Total			$115,808.45
Deduct:			
2. Increase in deduction for allowable contributions		$622.45	
3. Interest and trustee's fees allowed as deductions		347.18	
			969.63
Net income adjusted			$114,833.82
Less: Capital net gain			2,202.33
Income subject to tax at ordinary rates			$112,636.49
31a Less:			
Dividends	$81,030.00		
Personal exemption	3,500.00		
			94,530.00
Balance subject to normal tax			$28,106.49
Normal tax of 1½% on $4,000.00			$60.00
Normal tax at 3% on $4,000.00			120.00
Normal tax at 5% on $20,106.49			1,005.32
Surtax on $112,636.49			14,187.30
Adjustment for capital gain (12½% of $2,202.33)			275.29
Total			$15,647.91
Less: Credit of 25% of tax on earned net income			206.25
Tax liability			$15,441.66
Tax previously assessed			12,384.50
Deficiency in tax			$3,057.16

Explanation of changes

1. Dividends in the amount of $16,650.00, representing income of five trusts, which is applied to the payment of premiums upon policies of insurance on your life or which has been accumulated for that purpose, have been added to your net income in accordance with section 219 (h) of the Revenue Act of 1926.

2. Since the amount of deductible contributions shown in the schedule attached to the return, or $18,121.00, is not in excess of 15% of the corrected net income, the entire amount has been allowed as a deduction instead of $17,498.55, as claimed on the return.

3. Interest and trustees' fees in the amount of $347.18, have been allowed as deductions since these expenses were in connection with the collection of income from the five insurance trusts mentioned above.

Payment of the deficiency in tax should not be made until a bill is received from the collector of internal revenue for your district, and remittance should then be made to him.

32a Filed May 15, 1928

Before United States Board of Tax Appeals

[Title omitted.]

Answer of Commissioner of Internal Revenue in cause no. 36459

The Commissioner of Internal Revenue by his attorney, C. M. Charest, General Counsel, Bureau of Internal Revenue, for answer to the petition filed in the above-entitled appeal, admits and denies as follows:

A. Admits the allegations contained in paragraph A of the petition.

B. Admits the allegations contained in paragraph B of the petition.

C. Admits that the taxes in controversy are income taxes for the calendar year 1925 and that the amount of the proposed deficiency is $3,057.16.

D. (1) Denies that the Commissioner erred as alleged in paragraph D (1) of the petition.

E. (1) Admits that prior to the enactment of the Revenue Act of 1924, the taxpayer created five trusts, the income of which was to be used for the purpose of paying premiums upon policies of insurance on his life. Denies that such trusts were irrevocable. Admits that the Commissioner in computing the deficiency, included amounts received by the said trusts amounting to $16,650.00 in the gross income of the grantor (taxpayer for 1925 and allowed a deduction therefrom of $347.18 on account of said trusts. Admits that the taxpayer omitted this income from his return for 1925. Denies the remaining allegations of paragraph E (1) of the petition.

(2) (a) Admits that on December 30, 1922, the taxpayer assigned 1,000 shares of the preferred capital stock of the Wells Securities Company, par value of $100,000.00, to the Minneapolis Trust Company, trustee. Denies that such assignment was irrevocable.

(b) Admits that the income from said trust estate, and so much of the trust estate as may be necessary, is to be used to pay the annual net premiums on a life insurance policy, written upon the life
33a of the taxpayer, for $100,000.00, with the Minneapolis Trust Company as trustee, beneficiary. Respondent has no knowledge or information sufficient to form a belief as to the remaining allegations of subparagraph (2) (b) of paragraph E and therefore denies the same.

(c), (d) Respondent has no knowledge or information sufficient to form a belief as to the allegations of subparagraphs (2) (c) and (2) (d) of paragraph E and therefore denies the same.

(e), (f), (g), (h) Denies the allegations of subparagraphs (e) to (h), inclusive, of paragraph E (2) of the petition.

(3) (a) Admits that on December 30, 1922, the taxpayer paid, transferred and assigned $450.00 in cash and 75 shares of the preferred capital stock of the Wells Securities Company, par value of $7,500.00, to the Minneapolis Trust Company and Leontine Lindstrom, as trustees. Denies that such transfer and assignment are irrevocable.

(b) Admits the allegations of subparagraph (3) (b) of paragraph E of the petition.

(c), (d) Respondent has no knowledge or information sufficient to form a belief as to the allegations of subparagraphs (3) (c) and (d) of paragraph E of the petition and therefore denies the same.

(e), (f), (g), (h) Denies the allegations of subparagraphs (3) (e) to (h), inclusive, of paragraph E of the petition.

(4) (a) Admits that on December 31, 1922, the taxpayer paid, transferred, and assigned $3,550.00 in cash and 625 shares of the preferred capital stock of the Wells Securities Company, par value $62,500.00, to the Minneapolis Trust Company, as trustee. Denies that such transfer and assignment were irrevocable.

(b) Admits that the net annual income of the trust estate, or so much as may be necessary, and in the event the same is not sufficient, such part of the trust estate as may be necessary for such purpose shall be used to pay the net annual premium on four life insurance policies upon the life of the taxpayer. Respondent has no knowledge or information sufficient to form a belief as to the remaining allegations of subparagraph (4) (b) of paragraph E and therefore denies the same.

34a (c), (d) Respondent has no knowledge or information sufficient to form a belief as to the allegations of subparagraphs (4) (c) and (d) of paragraph E and therefore denies the same.

(e), (f), (g), (h) Denies the allegations of subparagraphs (4) (e) to (4) (h), inclusive, of paragraph E of the petition.

(5) (a) Admits that on August 6, 1923, the taxpayer transferred and assigned 1,000 shares of the preferred capital stock of the Wells Securities Company, par value of $100,000.00 to the Minneapolis Trust Company as trustee. Denies that such transfer and assignment were irrevocable.

(b) Admits that the income from the trust estate, and so much of the trust estate as may be necessary, is to be expended by the trustee to pay the annual net premium on the life insurance policies upon the life of the taxpayer. Respondent has no knowledge of information sufficient to form a belief as to the remaining allegations of subparagraph (5) (b) of paragraph E and therefore denies the same.

(c) Respondent has no knowledge or information sufficient to form a belief as to the allegations of paragraph E (5) (c) and therefore denies the same.

(d), (e), (f), (g) Denies the allegations of subparagraphs (5) (d) to (5) (g), inclusive, of paragraph E of the petition.

(6) (a) Admits that on August 6, 1923, the taxapyer transferred and assigned 1,000 shares of the preferred capital stock of the Wells Securities Company, par value $100,000.00, to the Minneapolis Trust Company, as trustee. Denies that such transfer and assignment were irrevocable.

(b) Admits that the income from the trust estate and so much of the trust estate as may be necessary, is to be expended by the trustee to pay the net annual premiums on life-insurance policies written upon the life of the taxpayer. Respondent has no knowledge or information sufficient to form a belief as to the remaining allegations of subparagraphs (6) (b) of paragraph E and therefore denies the same.

(c) Denies the allegations of subparagraph (6) (c) of paragraph E, which incorporates by reference the allegations of subparagraphs (5) (d) to (5) (g), inclusive, of paragraph E.

(7) Denies the allegations of subparagraph (7) of paragraph E of the petition.

35a Denies generally each and every allegation contained in the petition not hereinbefore specifically admitted or denied.

Wherefore it is prayed that the petitioner's appeal be denied.

C. M. CHAREST,
General Counsel, Bureau of Internal Revenue.

Of counsel:

IRWIN R. BLAISDELL,
Special Attorney, Bureau of Internal Revenue.

HDT-crp.
5/12/28.

Before United States Board of Tax Appeals

Petition of Frederick B. Wells for appeal in cause no. 40915

Filed Oct. 5, 1928

[Title omitted.]

The above-named petitioner hereby petitions for a redetermination of the deficiency set forth by the Commissioner of Internal Revenue in his notice of deficiency (IT:AR:B-2 LGH-60D) dated August 9, 1928, and as a basis of this proceeding alleges as follows:

Jurisdiction of the Board

A. The petitioner is an individual with office at 312 Chamber of Commerce, Minneapolis, Minnesota.

B. The notice of deficiency (a copy of which is attached and marked "Exhibit A") was mailed to the petitioner on August 9, 1928.

C. The taxes in controversy are income taxes for the calendar year 1926 and are in amount five thousand four hundred seventy dollars and thirty cents ($5,470.30).

Assignment of error

D. The determination of tax set forth in the said deficiency is based upon the following error:

(1) The Commissioner erred in including in the taxable net
36a income of the taxpayer the net income of five irrevocable trusts, which the taxpayer had created prior to the enactment of the Revenue Act of 1924, and the net income of which was or might be applied to the payment of premiums upon policies of insurance on the life of the grantor (taxpayer), who had divested himself of all rights, interests, and benefits under said policies.

Statement of facts

E. The facts upon which the taxpayer relies as the basis of this proceeding are as follows:

(1) Prior to the enactment of the Revenue Act of 1924 the taxpayer created five irrevocable trusts, the income of which was to be used for the purpose of paying premiums upon policies of insurance on his life. The Commissioner in computing the said deficiency included dividends received by the said trusts amounting to $27,750.00 in the gross income of the grantor (taxpayer) for said calendar year 1926 and allowed a deduction therefrom of $318.80 on account of said trusts. The taxpayer omitted this income from his

return for said year as the trustees of said trusts reported said income as taxable to them as trustees. The facts relating to the said five trusts are given below.

Trust created by taxpayer December 30, 1922

(2) (a) On December 30, 1922, the taxpayer irrevocably assigned 1,000 shares of the preferred capital stock of the Wells Securities Company, par value of $100,000.00, to the Minneapolis Trust Company, trustee.

(b) The income from said trust estate, and so much of the trust estate as may be necessary, is to be used to pay the annual net premiums on a life insurance policy written upon the life of the taxpayer for $100,000.00 with the Minneapolis Trust Company as trustee, beneficiary. The income in excess of the sum necessary to pay the first and successive premiums is to be retained until an amount has been accumulated to pay one additional net annual premium, the balance, in the discretion of the trustee, to be paid to the daughter of grantor, at the end of each year.

(c) Upon the death of the grantor, the proceeds of said life insurance policy are to become part of the trust estate, and the net income is to be paid to said daughter as long as she shall live, and upon her death said trust estate to be distributed to persons designated by her to receive it, or if she leaves no will, to her issue, and if she leaves no issue, to her brothers when the youngest reaches the age of twenty-five years.

37a (d) The said insurance policy was written at the same time said trust was created.

(e) The Minneapolis Trust Company, as trustee, has all the rights under the said insurance policy, the taxpayer having retained no right in or control over said policy, and having no interest in the cash value or loan value thereof, nor the right to change the beneficiary of said policy. Under the trust agreement the trustee is given full power and authority to deal with the said insurance company and with the said insurance in any manner that it may deem for the best interests of such Minneapolis Trust Co., as trustee, and may borrow money thereon, or may avail itself of any of the conditions, privileges, or benefits provided by the terms of the said policy of life insurance.

(f) The taxpayer is not in any sense a beneficiary of said trust.

(g) The taxpayer did not retain any right to revoke, in whole or in part, either alone or in conjunction with some other person, the said trust or provisions of the said insurance policy.

(h) The taxpayer did not receive, either constructively or actually any part of the net income of said trust during the said calendar year 1924.

Trust created by taxpayer December 30, 1922

(3) (a) On December 30, 1922, the taxpayer irrevocably paid, transferred and assigned $450 in cash and 75 shares of the preferred capital stock of the Wells Securities Company, per value of $7,500 to the Minneapolis Trust Co. and Leontine Lindstrom, as trustees.

(b) The annual net income of the trust estate, or so much as may be necessary, is to be used to pay the annual net premiums on a life insurance policy upon the life of the taxpayer for $10,000 with the said trustees as beneficiaries, and if the income is not sufficient then the additional amount necessary to pay the premiums shall be taken from the principal.

(c) Upon the death of the taxpayer the securities placed in the said trust estate, or the securities held in lieu thereof and purchased with the proceeds of the sale thereof, are to be paid over and delivered to the Minneapolis Foundation for charitable purposes; and the trustees are to collect the proceeds of the life insurance policy from the insurance company, and to invest and reinvest the
38a same, disbursing, however, the income upon the investment of the proceeds of the life insurance policy, and so much of the principal thereof from time to time as may, in their discretion, be necessary for the support, maintenance, and education of Shirley Irene Lindstrom, niece of the said Leontine Lindstrom, cotrustee, and when the said Shirley Irene Lindstrom shall reach the age of 21 years, to pay over to her the entire trust estate then remaining. In the event the said Shirley Irene Lindstrom shall predecease the grantor then the trust shall fail and determine upon her death, and the trustees shall forthwith surrender the life insurance policy for cancellation, collect its cash surrender value and pay the same over to the Minneapolis Foundation, not for its own use and benefit, however, but upon the trusts defined in the said agreement. In the event the grantor shall be living when the said Shirley Irene Lindstrom attains the age of 21 years then the trust shall cease and determine and the trustees shall forthwith surrender the said policy of insurance for cancellation, collect its cash surrender value and pay the same over to the said Shirley Irene Lindstrom.

(d) The said insurance policy was written at the same time the said trust was created.

(e) The Minneapolis Trust Company and Leontine Lindstrom, as cotrustees, have all the rights under the said insurance policy, the taxpayer having retained no right in or control over said policy and having no interest in the cash value or loan value thereof, nor the right to change the beneficiary of said policy. Under the trust agreement the trustees are given full power and authority to deal with the Insurance Company and with the said insurance in any manner that it may deem for the best interests of the said Minneapolis Trust Company and Leontine Lindstrom, cotrustees, and may borrow money thereon, or may avail themselves of any of the conditions, privileges, or benefits provided by the terms of the said policy of life insurance.

(f) The taxpayer is not in any sense a beneficiary of said trust.

(g) The taxpayer did not retain any right to revoke, in whole or in part, either alone or in conjunction with some other person, the said trust or provisions of the said insurance policy.

(h) The taxpayer did not receive, either constructively or actually, any part of the net income of said trust during the said calendar year 1924.

39a Trust created by taxpayer December 30, 1922

(4) (a) On December 30, 1922, the taxpayer irrevocably paid, transferred, and assigned $3,550 in cash and 625 shares of the preferred capital stock of the Wells Securities Company, par value $62,500, to the Minneapolis Trust Company, as trustee.

(b) The net annual income of the trust estate, or so much as may be necessary, and in the event the same is not sufficient, such part of the trust estate as may be necessary for such purpose, shall be used to pay the net annual premiums on four life insurance policies aggregating $77,095 written upon the life of the taxpayer for the benefit of certain persons. Any income from the trust estate in excess of the sum necessary to pay the said annual premiums shall be retained to pay the premiums in years when the trust estate shall not have sufficient income.

(c) Upon the death of the taxpayer, or upon the happening of the contingency, when during the life of the grantor the premiums on the four insurance policies shall cease to be demanded or paid, by reason of the fact that all of the beneficiaries named under the four policies shall predecease him or otherwise, then, and in that event, the trustee shall forthwith deliver over to the Minneapolis Foundation the entire trust estate then it its possession, for the charitable purposes named in the said trust agreement.

(d) The said insurance policies were written at the same time the said trust was created.

(e) The taxpayer retained no right in or control over the said policies and has no interest in the cash values and loan values thereof, nor the right to change the beneficiaries of the said policies. Under the trust agreement the trustee is given full power and authority to deal with the Insurance Company and with the said insurance in any manner that it may deem for the best interests of the beneficiaries, and may borrow money thereon, or may avail itself of any of the conditions, privileges or benefits provided by the terms and conditions of the said policies of insurance.

(f) The taxpayer is not in any sense a beneficiary of said trust.

(g) The taxpayer did not retain any right to revoke, in whole or in part, either alone or in conjunction with some other person, the said trust or provisions of the insurance policies.

40a (h) The taxpayer did not receive, either constructively or actually, any part of the net income of the said trust during the calendar year 1924.

Trust created by taxpayer August 6, 1923

(5) (a) On August 6, 1923, the taxpayer irrevocably transferred and assigned 1,000 shares of the preferred capital stock of the Wells Securities Company, par value of $100,000, to the Minneapolis Trust Company, as trustee.

(b) The income from the trust estate, and so much of the trust estate as may be necessary, is to be expended by the trustee to pay the annual net premiums on life insurance policies aggregating $174,597 and accident insurance policies aggregating $49,600 written upon the life of the taxpayer with the Minneapolis Trust Company, as trustee, beneficiary. Income in excess of the sum necessary to pay the first and successive premiums is to be retained until a sum has been accumulated equal to the amount necessary to pay two successive annual premiums upon all of the said insurance policies, and any accumulation in excess of this amount shall be distributed to the children of the grantor in the proportion that they shall ultimately receive the income from the said trust estate.

(c) Upon the death of the taxpayer, the trustee is to collect the proceeds of the said insurance policies and add same to the trust estate. The income from the then trust estate is to be paid to the children of the taxpayer as follows: The income on $225,000 equally to the three sons of the grantor and the balance of income equally to his three sons and daughter, so long as they or each of them shall live, with power to the trustee, in its discretion, upon advice of a parent or guardian, to withhold the income from any or all of his sons until he, or they, shall have attained the age of 30 years. Upon the death of each of the grantor's sons, $75,000 in cash or securities, plus one fourth of the residue of the trust estate over and above $225,000 in value, shall be paid over, or delivered, by the trustee to such person or persons as such deceased son shall have designated by will to receive it, and the appointment failing, to such person or persons as are entitled to receive it under the laws of descent then in effect in the State of Minnesota. Upon the death of the daughter of the grantor, one fourth of the residue of the said trust estate over and above the sum of $225,000 in cash or securities, shall likewise be paid over, or delivered to such persons as she shall designate, and the appointment failing, to such persons as are entitled to
41a receive the same under the statutes of descent in effect in the State of Minnesota at the time of her death.

(d) The said insurance policies were written a number of years previous to the creation of said trusts, and had been previously irrevocably assigned to Mary Drew Wells, wife of the taxpayer, who irrevocably assigned them to the Minneapolis Trust Company, as trustee, to make them part of the said trust estate. The said Mary Drew Wells had previously paid the premiums herself on some of these policies from her own funds. The grantor had no rights under, or interest in, the said insurance policies previous to the creation of the said trust estate, and none whatsoever after the trust

estate was created. Under the trust agreement the trustee is given full power and authority to deal with the Insurance Company and with the said insurance in any manner that it may deem for the best interests of the beneficiaries, and may borrow mon'y thereon, or avail itself of any of the conditions, privileges, or benefits provided by the terms and conditions of the said policies of insurance.

(e) The taxpayer is not in any sense a beneficiary of said trust.

(f) The taxpayer did not retain any right to revoke, in whole or in part, either alone or in conjunction with some other person, the said trust or provisions of the insurance policies.

(g) The taxpayer did not receive, either constructively or actually, any part of the net income of the said trust during the calendar year 1924.

Trust created by taxpayer August 6, 1923

(6) (a) On August 6, 1923, the same date as the trust agreement heretofore mentioned, the taxpayer irrevocably transferred and assigned 1,000 shares of the preferred capital stock of the Wells Securities Company, par value $100,000, to the Minneapolis Trust Company, as trustee.

(b) The income from the trust estate, and so much of the trust estate as may be necessary, is to be expended by the trustee to pay the net annual premiums on life-insurance policies aggregating $170,000, and accident-insurance policies aggregating $54,800, written upon the life of the taxpayer with the Minneapolis Trust Company, as trustee, beneficiary. Income in excess of the sum necessary to pay the first and successive premiums is to be retained until a sum has been accumulated equal to the amount necessary to
42a pay two successive annual premiums upon all of the said insurance policies, and any accumulation in excess of this amount shall be distributed to the children of the grantor in the proportion that they shall ultimately receive the income from the said trust estate.

(c) The provisions of said trust agreement and facts of said trust and insurance policies are the same as stated in paragraphs (5) (d) to (5) (g), inclusive, with reference to the other trust created on the same date.

7. The taxpayer, in creating said trusts, divested himself of all interest, right, title, and control which he had in said shares of stock and insurance policies.

F. Wherefore, the petitioner prays that this Board may hear the proceeding and may determine that no part of the income received by the said trusts is to be included in the taxable net income of the taxpayer for the year 1926; and that there is no deficiency due from the said petitioner for the year 1926.

(Signed) J. B. TEMPLETON,
Counsel for Petitioner,
312 Chamber of Commerce, Minneapolis, Minn.

Duly sworn to by Frederick B. Wells, jurat omitted in printing.

43a *Exhibit A to petition*

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, Aug. 9, 1928.

Mr. FREDERICK B. WELLS,
312 Chamber of Commerce, Minneapolis, Minnesota.

SIR: In accordance with section 274 of the Revenue Act of 1926 you are advised that the determination of your tax liability for the years 1926 discloses a deficiency of $5,470.30, as shown in the attached statement.

The section of the law above mentioned allows you to petition the United States Board of Tax Appeals within sixty days from the date of the mailing of this letter for a redetermination of your tax liability. However, if you acquiesce in this determination, you are requested to execute the enclosed form 866 and forward both original and duplicate to the Commissioner of Internal Revenue, Washington, D. C., for the attention of IT:C:P-7.

Respectfully,

D. H. BLAIR,
Commissioner,
By (Signed) C. B. ALLEN,
Deputy Commissioner.

Enclosures:
Statement
Form 866
Form 882

Statement

IT:AR:B-2
LGH-60D
Aug. 9, 1928.

In re: Mr. Frederick B. Wells,
312 Chamber of Commerce,
Minneapolis, Minnesota.

Year 1926, deficiency in tax, $5,470.30.

The report of the internal revenue agent in charge, St. Paul,
44a Minnesota, covering an investigation of your books of account and records for the year 1926, a copy of which has been furnished you, has been reviewed and approved by this office as submitted.

Net income reported	$203,499.47
Add:	
1. Dividends not reported	27,750.00
Total	$231,249.47
Deduct:	
2. Additional expense allowed	318.80
Adjusted net income	$230,930.67
Capital gain	$425.00

Computation of Tax

Net income adjusted		$230,930.67
Less:		
Dividends	$195,354.00	
Personal exemption	3,500.00	
		$198,854.00
Income subject to normal tax		$32,076.67
Normal tax at 1½% on $4,000.00		$60.00
Normal tax at 3% on $4,000.00		120.00
Normal tax at 5% on $24,076.67		1,203.83
Surtax on $230,930.67		37,846.13
Tax at 12½% on $425.00		53.13
Total tax		$39,283.09
Less:		
Earned income credit		206.25
Tax assessable		$39,076.84
Brought forward		$39,076.84
Tax previously assessed		33,006.54
Deficiency in tax		$5,470.30

Explanation of changes

1 and 2. You are advised that the income of the irrevocable trusts created by you, the income of which is to be used to pay the annual premiums on certain insurance policies on your life, is held to be income to you. In this connection you are referred to section 219 (h) of the Revenue Act of 1926.

45a Payment should *be* not be made until a bill is received from the collector of internal revenue for your district, and remittance should then be made to him.

The liability as shown on form 866 is determined as follows:

Tax reported on return	$33,006.54
Proposed deficiency in tax	5,470.30
Liability stated on form 866	39,076.84

Before United States Board of Tax Appeals

[Title omitted.]

Answer of Commissioner of Internal Revenue in Cause No. 40915

Filed Dec. 5, 1928

Comes now the Commissioner of Internal Revenue, by his attorney, C. M. Charest, General Counsel, Bureau of Internal Revenue, and for answer to the petition filed herein, admits and denies as follows:

A. Admits the allegations contained in paragraph A of the petition.

B. Admits the allegations contained in paragraph B of the petition.

C. Admits the allegations contained in paragraph C of the petition.

D. Denies that the Commissioner erred as alleged in paragraph D of the petition.

E. (1) to (7), inclusive. Denies the allegations contained in subparagraphs (1) to (7), inclusive, of paragraph E of the petition.

Denies each and every other allegation of fact contained in the petition not hereinbefore specifically admitted, qualified or denied.

46a Wherefore, it is prayed that the Commissioner's determination be approved and that the petition be dismissed and the appeal denied.

C. M. CHAREST,
General Counsel, Bureau of Internal Revenue.

Of counsel:
A. H. FAST,
HAROLD D. THOMAS,
Special Attorneys, Bureau of Internal Revenue.

(Record of proceedings before United States Board of Tax Appeals in consolidated causes.)

A true copy:
Teste
[SEAL]

B. E. GAMBLE,
Clerk U.S. Board of Tax Appeals.

19 B.T.A. ——

Before United States Board of Tax Appeals

FREDERICK B. WELLS, PETITIONER

vs.

COMMISSIONER OF INTERNAL REVENUE, RESPONDENT

Docket Nos. 29159, 36459, and 40915. Promulgated May 28, 1930

Findings of fact and opinion

Petitioner created certain trusts the income from which was used to pay premiums on life insurance policies on his life, held, that under section 219 (h) of the Revenue Acts of 1924 and 1926 such income should be included in petitioner's net income regardless of whether the trusts created were revocable or irrevocable.

The provisions of section 219 (h) are not so arbitrary or capricious as to amounts to confiscation of property without due process of law.

J. B. Templeton, Esq., for the petitioner.

A. H. Fast, Esq., and H. D. Thomas, Esq., for the respondent.

These proceedings, which were consolidated for hearing and decision, are for the redetermination of deficiencies in income taxes
47a of $4,809.37 for 1924, $3,057.16 for 1925, and $5,470.30 for 1926.

The petition in docket number 29159, involving the deficiency for 1924, alleges the following errors:

(1) The Commissioner, in determining the net income of the taxpayer for the said calendar year 1924, included the net income of five irrevocable trusts which the taxpayer had created prior to the enactment of said act, the income of which was or might be applied to the payment of premiums upon policies of insurance on the life of the grantor (taxpayer) who had divested himself of all rights, interests and benefits under said policies, the said action of the Commissioner being contrary to the intent of section 219(h) and other provisions of the Revenue Act of 1924.

(2) In the event that it is held that the taxpayer is subject to tax on any part of the income of said trusts in accordance with section 219 (h) of the Revenue Act of 1924 then the taxpayer further avers that said section is unconstitutional so far as it relates to the inclusion in the taxable net income of the grantor or any part of the income of a trust which is or may be applied to the payment of premiums upon policies of insurance on the life of the grantor.

The petitions in docket numbers 36459 and 40915, involving the deficiencies for 1925 and 1926, respectively, allege error on the part of the respondent as hereinabove set forth in allegation one of docket number 29159.

The petitioner submitted the case upon the pleadings, an agreed statement of facts, certain documentary evidence and brief.

FINDINGS OF FACT

On December 30, 1922, the petitioner created by three separate trust indentures certain trusts hereinafter referred to as trusts numbered one, two, and three. On August 6, 1923, by separate trust indentures, he created two additional trusts, hereinafter referred to as trusts numbered four and five.

By the provisions of trust number one petitioner assigned, transferred and conveyed unto the Minneapolis Trust Company, trustee, "Certificate no. 8 for 1,000 shares of the six per cent cumulative preferred stock of the Wells Securities Company, a Delaware corporation, said stock being of the par value of $100.00 per share; not for its own use and benefit, however, but upon the trusts herein-
48a after defined: * * *.

The trustee was empowered to take possession of, manage and control the trust estate, demand, receive, and collect income and dividends therefrom, invest and reinvest the trust estate, or sell and convey the same as it deemed best. In case of sale the proceeds were to be invested and reinvested only in such securities as are now authorized by the laws of the State of Minnesota for the investment

of funds of trust companies. The income of the trust estate was to pay the net annual premiums upon a certain life insurance policy upon the petitioner's life, hereinafter more fully considered. The trustee was given full power and authority to deal with the insurance in any manner that it deemed best for the interest of the said Minneapolis Trust Company, trustee, and the trustee was authorized to borrow money thereon or avail itself of any of the conditions, privileges, benefits under said policy. The trustee was to accumulate the income in excess of the net annual premiums until an amount sufficient to pay one additional net annual premium had been accumulated, any income in excess thereof was, in the discretion of the trustee, to be paid over to petitioner's daughter, Mary Wright Peavey Wells, at the end of each year. Upon petitioner's death the trustee was to collect the face amount of the policy and purchase from petitioner's estate securities amounting to $100,000, and the trustee was empowered to manage and control, sell and reinvest the trust corpus and/or the proceeds from any sale, in accordance with the laws of Minnesota relating to the investment of trust funds. After the petitioner's death the income from the trust estate was to be paid over to his daughter during her lifetime in quarterly installments. Upon the death of petitioner's daughter the trust was to cease and determine, and the trustee was to pay over the corpus to such person or persons as were appointed by the daughter's will or in default thereof, to her issue, and in default of disposition by will or issue of the daughter, then in equal parts to petitioner's sons when the youngest thereof, or the youngest of the survivors, attained the age of twenty-five years.

The insurance policy under trust number one was taken out by petitioner on his life on the same day the trust was created, naming the Minneapolis Trust Company, trustee, as his beneficiary. Petitioner's application for said policy stated that the right to change the beneficiary was waived.

By the provisions of trust number two, the petitioner assigned, transferred, and conveyed unto the Minneapolis Trust Company and Leontine Lindstrom, trustees, $450 in cash, 75 shares of
49a six per cent cumulative preferred stock of the Wells Securities Company, and a certain life insurance policy, not for their own use and benefits, however, but on the trust hereinafter defined. The duties of the trustees were substantially the same as the duties of the trustee in trust number one. The income from the trust estate was to be applied to the payment of the net annual premiums due upon the life insurance policy, assigned and conveyed to the trustees, and the trustees were given the same powers with respect to said policy as were given the trustee in trust number one. Upon petitioner's death the trustees were to pay over to the Minneapolis Foundation, the said 75 shares of preferred corporate stock, or such securities as were held in lieu thereof, and the trustees were to collect the proceeds of the life insurance policy and invest and reinvest the

the same in their discretion. The annual income resulting from the trust estate remaining in the hands of the trustee and so much of the principal as in the discretion of the trustees was necessary, was to be paid over for the support, maintenance, and education of Shirley Irene Lindstrom until she attained the age of twenty-five, at which time the entire trust estate remaining in the hands of the trustee was to be paid over to the said Shirley Irene Lindstrom. In the event that Shirley Irene Lindstrom predeceased the petitioner, the trust in her favor was to cease and determine and the trustees were to surrender the life insurance policy, collect the cash surrender value and pay over the same to the Minneapolis Foundation. If petitioner survived until Shirley Irene Lindstrom attained the age of twenty-one, to wit, March 12, 1938, the trust in her favor shall cease and determine and the trustees shall surrender the policy of life insurance for cancellation, collect the cash surrender value, and pay the same over to Shirley Irene Lindstrom. Also by trust number two, petitioner gave, granted, and conveyed in perpetuity to the Minneapolis Foundation the 75 shares of preferred stock, or the securities held in lieu thereof at the date of his death, upon the following trusts: To manage and control the trust estate, invest and reinvest the same and sell or convey securities as it deemed best; to pay the net annual income to the rector and wardens and vestrymen of St. Marks Church for the sole purpose of carrying on the work of the Wells Memorial, a definite charity conducted by the said church corporation. If the Wells Memorial ceased to be conducted as a definite charity, then the net income was given to the Minneapolis Foundation for its own uses and purposes. With respect to
50a both trusts created by trust number two it was provided that if the accumulation of income in the living trust be declared void for any reason, such accumulation was to be paid over to the Minneapolis Foundation for its own uses and purposes, but should either the living trust or the perpetual trust, herein defined, be declared void as a trust, then the trust shall revert to petitioner if living, otherwise to his heirs, executors, administrators, or assigns.

The life insurance policy assigned, transferred and conveyed as a part of trust number two was taken out by petitioner on November 27, 1922 with his executors, administrators, or assigns as beneficiary thereof. On January 16, 1923, the policy was made payable at the death of the insured to the Minneapolis Trust Company and Leontine Lindstrom, as trustees, and "the right to make future changes of any beneficiary herein, without the consent of the beneficiary or beneficiaries herein, has been revoked and canceled; a legal request therefore having been received."

By the provisions of trust number three the petitioner assigned, transferred and conveyed unto Minneapolis Trust Company $3,550 in cash, and certificate no. 2 for 625 shares of 6 per cent cumulative preferred stock of the Wells Securities Company, not for its own use and benefit, however, but upon the trusts hereinafter defined. The

trustee's powers were substantially the same as those set forth in trust number one, and the net income from the trust estate was to be applied to the payment of net annual premiums of four life insurance policies written upon petitioner's life for the benefit of persons therein named, three of the four beneficiaries being relatives of the petitioner, and one a valued employe. As in the preceding trusts, the trustee was empowered to deal with the insurance policies in any manner that it deemed for the best interests of the beneficiaries, to borrow money thereon, or to avail itself of the conditions, privileges, or benefits of said policies. The income from the trust estate in excess of the sum necessary to pay annual premiums was to be retained to pay future premiums. If, during petitioner's lifetime, the insurance company failed to demand payment, or each of the beneficiaries named under the four policies predeceased the petitioner, or if for any other reason payments on said policies shall cease to be demanded or paid, then the trustee was to convey the trust estate to the Minneapolis Foundation in trust. The terms of this latter trust with respect to the Minneapolis Foundation were almost identical with the terms of the trust created in trust number two for the benefit of said Minneapolis Foundation.

51a Three of the four insurance policies provided that, in the event of the death of the beneficiary, therein named, before receiving all the monthly payments provided for in said policies, the remainder of said payments should go to Helen R. Golding, valued employee of the petitioner, otherwise to the trustees of the Minneapolis Foundation. The fourth policy named Helen R. Golding as beneficiary and provided that if any installments payable under said policy remained unpaid at the death of said Helen R. Golding, that such unpaid installments should go to the Minneapolis Foundation. The face of each policy bears the following notation: "Springfield, Mass., March 22, 1923. The right to make future changes of any beneficiary herein without the consent of the beneficiary or beneficiaries herein has been specifically surrendered and canceled. (Signed) Albert D. Shaw, Asst. Sec."

By the provisions of trust number four, the petitioner assigned, transferred, and conveyed unto the Minneapolis Trust Company, trustee, certificate no. 16 for 1,000 shares of six percent cumulative preferred stock of the Wells Securities Company, not for its own use and benefit, however, but upon the trust hereinafter defined. The duties and powers of the trustee were essentially the same as those in trust number one, and the income from the trust estate was to be expended to discharge the net annual premiums on thirteen policies of accident and life insurance written upon the life of the petitioner. Income in excess of the net annual premiums was to be retained until the trustee had accumulated an amount equal to two successive annual premiums upon all of the policies of insurance, and any income in excess of such accumulations should be distributed among petitioner's children in the proportion in which they

would ultimately receive the income from the trust estate. Upon petitioner's death, the trustee was to collect the principal sums on the insurance policies and expend the proceeds thereof to purchase securities from petitioner's estate. Income from the trust estate after being thus augmented was to be distributed as follows: The income from $225,000 to be paid in equal parts to petitioner's three sons so long as they live, with power in the trustee to withhold the income until such sons shall attain the age of thirty years. Income from the residue of the trust to be divided equally between petitioner's sons and his daughter. Upon the death of each son $75,000 in cash or securities, and one fourth of the residue of the trust, to be paid over to such person or persons as the son shall designate by will, and in default of appointment, to such persons as are entitled by the laws of descent in Minnesota. Upon the death of peti-
52a tioner's daughter her one fourth of the residue, as she should appoint or in the default thereof, to such persons as are entitled under the laws of Minnesota. Petitioner reserved the right to appoint a trustee in the event of resignation or disqualification of the trustee named or any successor in trust.

The thirteen insurance policies upon which the trustee was to pay annual premiums were taken out on petitioner's life during the period 1906 to 1922, seven policies being entered into in 1911, and four in 1920. The ten life insurance policies were duly assigned by the beneficiaries therein named to the Minneapolis Trust Company, as trustee, during the period May 1, 1923, to February 14, 1924, six assignments occurring on May 1, 1923, three in June 1923, and one on February 14, 1924. The beneficiary of each of the three accident policies was changed to the Minneapolis Trust Company, trustee, in June or July 1923.

By the provisions of trust number five, the petitioner assigned, transferred, and conveyed unto Minneapolis Trust Company, trustee, certificate no. 17 for 1,000 shares of six percent cumulative preferred stock of the Wells Securities Company, not for its own use and benefit, however, but upon the trust hereinafter defined. The provisions of this trust are for the purposes of this proceeding identical with the provisions of trust number four. The trustee was to pay the net annual premiums on eleven life and accident insurance policies written upon the life of the petitioner, and the beneficiaries under the several policies assigned, transferred, and set over their interests therein to the Minneapolis Trust Company, trustee. As in trust number four, these policies were taken out at various times from 1898 down to and including the year 1922. The accident policies were made payable to the Minneapolis Trust Company, as trustee, and the life insurance policies were assigned by the beneficiaries to said trustee as follows: Five on May 1, 1923, one in June 1923, one in August 1923, and one on February 14, 1924. On July 16, 1923, petitioner changed the beneficiary on one policy to the Minneapolis Trust Company, trustee.

The net income of the said trust number one and the insurance premiums paid thereunder for the calendar years 1924 to 1926, inclusive, were as follows:

53a

Year 1924

Income:		
Dividends from domestic corporation		$6,000.00
Interest		4.66
Total income		$6,004.66
Deductions:		
Interest paid	$79.73	
Trustee fees	150.37	230.10
Net income		$5,774.56
Insurance premium paid		$3,866.00

Year 1925

Income:		
Dividends from domestic corporation		$4,500.00
Interest		32.51
Total income		$4,532.51
Deductions:		
Interest paid	$20.54	
Trustee fees	121.33	141.87
Net income		$4,390.64
Insurance premium paid		$3,830.00

Year 1926

Income:		
Dividends from domestic corporation		$7,500.00
Interest		60.54
Total income		$7,560.54
Deductions:		
Interest paid	$2.97	
Trustee fees	179.30	182.27
Net income		$7,378.27
Insurance premium paid		$3,690.00

The net income of the said trust number two and the insurance premiums paid thereunder for the calendar years 1924 to 1926, inclusive, were as follows:

Year 1924

Income:	
Dividends from domestic corporation	$450.00
Interest	3.06
Total income	$453.06
Deductions: Trustees Fees	20.37
Net income	$432.69
Insurance premium paid	$368.30

54a

Year 1925

Income:	
Dividends from domestic corporation	$337.50
Interest	4.57
Total income	$342.07
Deductions: Trustee fees	9.09
Net income	$332.98
Insurance premium paid	$364.00

Year 1926

Income:	
Dividends from domestic corporation	$562.50
Interest	5.15
Total income	$567.65
Deductions: Trustee fees	9.06
Net income	$558.59
Insurance premium paid	$346.50

The net income of the said trust number three and the insurance premiums paid thereunder for the calendar years 1924 to 1926, inclusive, were as follows:

Year 1924

Income:	
Dividends from domestic corporation	$3,750.00
Interest	34.32
Total income	$3,784.32
Deductions: Trustee fees	94.86
Net income	$3,689.46
Insurance premiums paid	$3,024.77

Year 1925

Income:	
Dividends from domestic corporation	$2,812.50
Interest	51.38
Total income	$2,863.88
Deductions: Trustee fees	75.83
Net income	$2,788.05
Insurance premiums paid	$2,991.63

55a

Year 1926

Income:	
Dividends from domestic corporation	$4,687.50
Interest	64.91
Total income	$4,752.41
Deductions: Trustee fees	76.22
Net income	$4,676.19
Insurance premiums paid	$2,856.89

The net income of the said trust number four and the insurance premiums paid thereunder for the calendar years 1924 to 1926, inclusive, were as follows:

Year 1924

Income:		
Dividends from domestic corporation		$6,000.00
Interest		25.40
Total income		$6,025.40
Deductions:		
Interest	$4.75	
Trustee fees	120.40	125.15
Net income		$5,900.25
Life insurance premiums paid		$4,596.17
Accident insurance premiums paid		190.00

Year 1925

Income:	
Dividends from domestic corporation	$4,500.00
Interest	41.35
Total income	$4,541.35
Deductions: Trustee fees	120.79
Net income	$4,420.56
Life insurance premiums paid	$4,853.23
Accident insurance premiums paid	190.00

1926

Income:	
Dividends from domestic corporation	$7,500.00
Interest	60.02
Total income	$7,560.02
Deductions: Trustee fees	121.07
Net income	$7,438.95
Life insurance premiums paid	$4,746.09
Accident premiums paid	190.00

56a The net income of the said trust estate number five and the insurance premiums paid thereunder for the calendar years 1924 to 1926, inclusive, were as follows:

Year 1924

Income:		
Dividends from domestic corporation		$6,000.00
Interest		15.86
Total income		$6,015.86
Deductions:		
Interest paid	$47.05	
Trustee fees	120.10	167.15
Net income		$5,848.71
Life insurance premiums paid		$4,962.83
Accident insurance premiums paid		100.00

Year 1925

Income:		
Dividends from domestic corporation		$4,500.00
Interest		11.83
Total income		$4,511.83
Deductions:		
Interest paid	$21.04	
Trustee fees	120.20	141.24
Net income		$4,370.59
Life insurance premiums paid		$4,875.65
Accident insurance premiums paid		200.00

Year 1926

Income:		
Dividends from domestic corporation		$7,500.00
Interest		25.26
Total income		$7,525.26
Deductions:		
Interest paid	$25.68	
Trustee fees	120.38	146.06
Net income		$7,379.20
Life insurance premiums paid		$4,765.37
Accident insurance premiums paid		200.00

In computing the deficiency in income tax for the calendar year 1924 the Commissioner included as taxable income of the petitioner dividends of a domestic corporation in amount of $16,132.95 received by five trusts created by the petitioner and allowed a deduction from the taxable income of the petitioner for said calendar year of $326.23 on account of said trusts. The petitioner omitted the said income and deduction from his income tax return for said year.

57a In computing the deficiency in income tax for the calendar year 1925 the Commissioner included as taxable income of the petitioner dividends of a domestic corporation in amount of $16,650 received by the said five trusts created by the petitioner and allowed a deduction from the taxable income of the petitioner for said calendar year of $347.18 on account of said trusts. The petitioner omitted the said income and deduction from his income tax return for said year.

In computing the deficiency in income tax for the calendar year 1926 the Commissioner included as taxable income of the petitioner dividends of a domestic corporation in amount of $27,750 received by the said five trusts created by the petitioner and allowed a deduction from the taxable income of the petitioner for said calendar year of $318.80 on account of said trusts. The petitioner omitted the said income and deduction from his income tax return for said year.

In computing the amount that he determined should be added to taxpayers' 1924 gross income, the Commissioner inadvertently omitted, from his total of $16,132.95 mentioned above, an item of $5,774.56, being the net income of trust number one for 1924, heretofore mentioned. The item so inadvertently omitted does not differ in any material respect from the other items included in the said $16,132.95.

For the year 1924 the total contributions made by petitioner amounted to $26,515.94. The Commissioner in his determination of the proposed deficiency for 1924 allowed $22,761.96 as a deduction for contributions, such amount being equal to fifteen per cent of the net income determined by him without allowance for any deduction for contributions. For the year 1925, the total contributions made by petitioner amounted to $18,121 and the entire amount thereof was allowed as a deduction by the Commissioner in his determination of the proposed deficiency for 1925. For the year 1926 the total contributions made by petitioner amounted to $16,267, and the entire amount thereof was allowed as a deduction by the Commissioner in his determination of the proposed deficiency for 1926.

OPINION

MORRIS: The petitioner is the grantor of five separate trusts by the terms of which the trustee therein named was to use such portion of the trust income as might be needed to pay annual pre-

58a miums on life insurance policies taken out on the grantor's

life. The facts show that such annual premiums were paid out of trust income during the calendar years 1924, 1925, and 1926. Respondent in computing petitioner's net income for these years included therein the amounts paid each year out of trust income as premiums on said policies in accordance with the provisions of section 219 (h) of the Revenue Acts of 1924 and 1926, which read as follows:

Where any part of the income of a trust may, in the discretion of the grantor of the trust, either alone or in conjunction with any person not a beneficiary of the trust, be distributed to the grantor or be held or accumulated for future distribution to him, or where any part of the income of a trust is or may be applied to the payment of premiums upon policies of insurance on the life of the grantor (except policies of insurance irrevocably payable for the purposes and in the manner specified in paragraph (10) of subdivision (a) of section 214), such part of the income of the trust shall be included in computing the net income of the grantor.

The petitioner contends that Congress did not intend to apply the provisions of section 219 (h) to situations where the grantor created an irrevocable trust and parted with all rights and benefits under such trust and under the insurance policies.

In order to answer this contention we must ascertain the Congressional intent or purpose in writing this particular provision into the taxing statutes. The subdivision first appears in the Revenue Act of 1924, and the Committee on Ways and Means of the House of Representatives, speaking with respect thereto, explained the purpose of section 219 as follows, Report No. 179 of the House of Representatives on the Revenue Bill of 1924, page 21:

This section has been rewritten in order to secure clarity and to prevent the evasion of taxes by means of estates and trusts. The changes made are quite important.

It is provided in the section that in the case of a trust where the trustee has the discretion to distribute or not, the income is taxed to the beneficiary if distributed and to the trustee if not distributed.

Subdivision (g) of this section provides that where the grantor of a trust reserves the right to change the trust in favor of himself the income is taxed to the grantor.

59a Subdivision (h) of this section provides that the income of a trust which may be distributed to the grantor or which may be used for the payment of premiums upon policies of insurance on his life shall be included in the gross income of the grantor. Trusts have been used to evade taxes by means of provisions allowing the distribution of the income of the grantor or its use for his benefit. The purpose of this subdivision of the bill is to stop this evasion. [Underscoring supplied.]

The Senate Committee on Finance in its Report No. 398 on the internal revenue bill of 1924, page 25, spoke with reference to section 219 of said bill as follows:

Section 219: This section has been rewritten in order to secure clarity and to prevent the evasion of taxes by means of estates and trusts.

(1) It is provided in the section that in the case of a trust where the trustee has the discretion to distribute or not, the income is taxed to the beneficiary if distributed and to the trustee if not distributed. The wording of subdivision (b) has been changed (1) to except from its provisions specifically subdivisions (g) and (h), which lay down special rules in lieu of the general provisions of subdivision (b): (2) to permit as an additional deduction that part of the gross income which, pursuant to the terms of the will or deed, is to be used exclusively for the prevention of cruelty to children or animals, since contributions by individuals to organizations for these purposes are deductible under section 214 (a) (10).

* * * * * *

(3) Subdivision (h) of this section provides that the income of a trust which may be distributed to the grantor of which may be used for the payment of premiums upon policies of insurance on his life shall be included in the gross income of the grantor. Trusts have been used to evade taxes by means of provisions allowing the distribution of the income to the grantor or its use for his benefit. The purpose of this subdivision of the bill is to stop this evasion.

The provisions of the House bill have been altered to exclude from taxation to the grantor of a trust income thereof used to pay premiums on insurance policies which are irrevocably payable to
60a the benevolent organizations described in section 214 (a) (10). A trust of this kind is a proper method of providing for a gift to such organizations, and since the income is being used for these benevolent purposes rather than for the grantor's personal benefit it should not be taxed to him. [Underscoring supplied.]

It appears from the above excerpts that Congress attempted by section 219 (g) and (h) of the 1924 act to provide against the evasion of taxes by estates and trusts. In subdivision (g) the language used indicates that Congress had in mind revocable trusts, since that subdivision provided that, where a grantor reserved the power to revest in himself title to any part of the trust corpus, the income from such part of the trust should be included in computing the grantor's net income. But in subdivision (h), the latter portion of which is applicable to the present facts, Congress used no language which would limit the application of this subdivision to either revocable or irrevocable trusts. Throughout this subdivision the term "trust" is used in such a manner as to preclude any limitation of that term to a particular class of trusts.

In our opinion, therefore, it is immaterial whether the trusts created by petitioner were revocable or irrevocable, because the test laid down by the statute is not revocability, but whether trust income "is or may be applied" to pay premiums upon policies of insurance

taken out on the grantor's life. In this case the stipulated facts show that trust income was applied during each of the taxale years to pay such premiums. It also appears that in none of the trusts were the proceeds of the policy irrevocably payable in the first instance to the Minneapolis Foundation so as to bring the trust within the exception in subdivision (h). In trust number two upon the death of the grantor the original trust corpus went to such Foundation, and upon the happening of certain contingencies additional sums were to be paid over to it under trusts number two and three, but the exception of the statute is applicable only where the policies of the insurance era irrevocably payable to or for the charitable purposes defined in section 214 (a) (10). Therefore, where the facts show that trust income was applied to the payment of premiums of life insurance policies which are outside the exception, the mandate of the law is that "such part of the income of the trust shall be included in computing the net income of the grantor." [Underscoring supplied.]

61a In docket number 29159 petitioner avers as an alternative issue that section 219 (h) of the Revenue Act of 1924 is unconstitutional in so far as it relates to the inclusion in his taxable income of any portion of the income of the trusts. On brief petitioner supports this issue by contending that the income from the trust was not income to him because such income was not received or drawn for his separate use, benefit, and disposal, citing the language of the Supreme Court in Eisner vs. Macomber, 252 U.S. 189, and United States vs. Phellis, 257 U.S. 156. Petitioner further contends that the trust corpus and the insurance policies were no longer a part of his estate and were not subject to his debts, that section 219 (h) is arbitrary and capricious so as to amount to confiscation, since it shifts the burden of tax from the persons benefited to those who have no personal interests in the income tax, and finally that to tax petitioner would impose an unexpected liability, from which petitioner is powerless to obtain relief, since he has irrevocably parted with all rights, interests, and benefits in the trust properties.

Petitioner's first contention under the alternative issue seems to be completely answered by the opinion of Mr. Chief Justice Taft in the Old Colony Trust Company, supra, wherein he states that the discharge by a third person of an obligation to him is equivalent to receipt by the person taxed. As to the contention that the trust corpus and the insurance policies were no longer a part of the petitioner's estate nor subject to his debts, it seems true that petitioner by the trust indentures and by the assignments of insurance policies has parted with all rights to revest such property in himself. But by the terms of the trust indentures he has provided that the income from the trust corpus shall discharge him from obligations which he had assumed and by the same indentures he has disposed of the proceeds of the insurance policies upon his death just as effectively as he could have done had he disposed of the same by will as a part of his personal estate.

In Corliss vs. Bowers, 34 Fed. (2d) 656, affirmed by the Supreme Court April 28, 1930, the Circuit Court of Appeals, Second Circuit, had for consideration virtually the same contentions with respect to the constitutionality of section 219 (g) and (h) of the 1924 act as are here raised by this petitioner. The facts in that case were that the grantor had created a revocable trust, the income from which was to be paid to his wife. The plaintiff contended that the
62a trust income paid to his wife under the trust instrument was not income to him, and that, if it be held to be his income, section 219 (g) and (h) was unconstitutional in that it was arbitrary and capricious and violated the fifth amendment. The court upheld the constitutionality of both subdivisions (g) and (h) of section 219 upon the theory that the grantor, having reserved control of the trust corpus and income, could at any time have revoked, altered, or modified the trust, and could have appropriated either the trust corpus or the income therefrom. In its opinion the court stated that it was "not unfair to tax the person who always has a will he may exercise and divest from the recipient a part or all of the income."

Petitioner distinguishes the Corliss case from the facts herein in that here the grantor created irrevocable trusts and parted with all rights, interests, and benefits with respect to the trust corpus and the insurance policies. With this contention we cannot agree because it seems apparent that a direct benefit flowed to the petitioner from the disposition which he made of the trust income. Prior to, or at the time, the trusts were created petitioner had obligated himself to pay certain premiums on various policies of insurance taken out on his life. Petitioner was primarily liable under these policies to pay the annual premiums. This liability he shifted to the trustee by vesting in the trustee certain securities and cash, the income from which was to be used by the trustee to meet petitioner's obligations. He derived an additional benefit in that by the trust indentures he disposed of each trust corpus after it had been augmented by the proceeds from insurance policies on his life. Furthermore, he benefited in that in trusts numbered one, four, and five the trustee was to use the proceeds of the several insurance policies to purchase securities from petitioner's estate which afforded some assurance that petitioner's executor or administrator in administering the estate would have available a large amount of cash.

In view of the foregoing we are of the opinion that subdivision (h) of section 219 of the Revenue Act of 1924 is not arbitrary or capricious so as to amount to confiscation of property without due process of law within the meaning of the fifth amendment to the Constitution. We believe that with respect to this particular case the law imposes the tax on the person directly benefited, and that in the absence of such a provision insurance trusts of this sort, or similar hereto, would be used to evade taxes.

63a In computing the amount of trust income to be included in petitioner's gross income for the calendar year 1924 the respondent inadvertently omitted the item of $5,774.56, being the net

income of trust number one for 1924. In redetermining the deficiency for 1924 this amount should be included as a portion of petitioner's taxable income. Since the effect of this decision is to increase petitioner's taxable income for 1924 it follows that there will be a corresponding increase in the deduction for contributions under the provisions of section 214 (a) (10).

Reviewed by the Board.

Decision will be entered under rule 50.

Before United States Board of Tax Appeals

Nos. 29159, 36459, and 40915

FREDERICK B. WELLS, PETITIONER

vs.

COMMISSIONER OF INTERNAL REVENUE, RESPONDENT

Order of redetermination, October 22, 1930

Pursuant to the opinion of the Board, promulgated May 28, 1930, the above entitled proceeding came on for hearing under rule 50 on August 27, 1930, at which time, both parties having submitted their computations of the deficiency, with different results, they contended that their respective computations should be adopted as setting forth the correct interpretation of the Board's opinion, and, it appearing from the findings of fact of our said opinion that with respect to trust numbered one "The income of the trust estate was to pay the net annual premiums upon a certain life insurance policy upon the petitioner's life, * * *", that "The trustee was to accumulate the income in excess of the net annual premiums until an amount sufficient to pay one additional net annual premium had been accumulated, any income in excess thereof was, in the discretion of the trustee, to be paid over to petitioner's daughter, Mary Wright Peavey Wells, at the end of each year."; that with respect to trust numbered two "The income from the trust estate was to be applied to the payment of the net annual premiums due upon the life insurance policy * * *"; that "The annual income resulting from the trust estate remaining in the hands of the trustee and so much of the principal as in the discretion of the trustees was necessary, was to be paid over for the support, maintenance, and education of Shirley Irene Lindstrom * * *"; that with respect to trust numbered three "the net income from the trust estate was to be applied to the
64a payment of net annual premiums of four life insurance policies written upon petitioner's life * * *"; that "The income from the trustee estate in excess of the sum necessary to pay annual premiums was to be retained to pay future premiums."; that with respect to trust numbered four "the income from the trust

estate was to be expended to discharge the net annual premiums on thirteen policies of accident and life insurance written upon the life of the petitioner. Income in excess of the net annual premiums was to be retained until the trustee had accumulated an amount equal to two successive annual premiums upon all of the policies of insurance, and any income in excess of such accumulations should be distributed among petitioner's children * * *."; that with respect to trust numbered five "The trustee was to pay the net annual premiums on eleven life and accident insurance policies written upon the life of the petitioner * * *,"; and, it appearing further, that section 219 (h) of the Revenue Acts of 1924 and 1926 provide for the inclusion in the net income of the grantor of such income as "is or may be applied to the payment of premiums upon policies of insurance on the life of the grantor"; that a portion of the said income was and the balance "may be applied" in the manner described in that said section of the statutes, and that it was the sense of the opinion to hold that the entire net income of the said several trusts should be included in the computation of net income, it is

Ordered and decided, that the respondent's recomputation be, and it is, hereby approved, and that there are deficiencies of $6,559.98, $3,057.16, and $5,470.30 for the years 1924, 1925 and 1926, respectively.

(Signed) LOGAN MORRIS,
Member, U.S. Board of Tax Appeals.

Enter: Entered, Oct. 22, 1930.

A true copy: Teste.

[SEAL U.S. BOARD OF TAX APPEALS, 1924]

B. D. GAMBLE,
Clerk U.S. Board of Tax Appeals.

65a In United States Circuit Court of Appeals for the Eighth Circuit

FREDERICK B. WELLS, PETITIONER

vs.

COMMISSIONER OF INTERNAL REVENUE, RESPONDENT

Docket Nos. 29159, 36459, 40915

Petition of Frederick B. Wells for review of decision of United States Board of Tax Appeals

Filed Jan. 26, 1931

To the Circuit Court of Appeals for the Eighth Circuit:

Your petitioner, Frederick B. Wells, respectfully shows:

I

This is a petition for review by the Circuit Court of Appeals of the Eighth Circuit of a decision of the United States Board of Tax Appeals promulgated May 28, 1930, and the final order in which was

entered October 22, 1930, redetermining deficiencies in Federal income taxes and/or surtaxes against the petitioner for the years 1924 to 1926, inclusive, in the following amounts:

1924	$6,559.98
1925	3,057.16
1926	5,470.30
Total	$15,087.44

II

Your petitioner resides at Minneapolis, in the State of Minnesota, and within the jurisdiction of the United States Circuit Court of Appeals for the Eighth Circuit.

III

The nature of the controversy before the Board of Tax Appeals was the determination of Federal taxes under the Revenue Acts of 1924 and 1926 involving the question of whether Congress intended to, or could under the Constitution, impose income taxes and/or surtaxes upon the petitioner with respect to income received by the trustees under irrevocable trusts and applied by them, or which might have been applied by them, to the payment of insurance premiums.

66a IV

The errors committed by the Board of Tax Appeals upon which the petitioner relies as the basis for this proceeding are:

1. In holding that section 219 (h) of the Revenue Acts of 1924 and 1926 precludes the limitation of the term "trust" to any particular class of trusts, and in not holding that the term "trust", as used in said section, is limited in its application to revocable trusts.

2. In holding that it is immaterial in the application of section 219 (h) of the Revenue Acts of 1924 and 1926 whether the trusts created by the petitioner were revocable or irrevocable, and in not holding such distinction material.

3. In holding that section 219 (h) of the Revenue Act of 1924 and 1926, under the facts of this case, applies to irrevocable trusts, the income from which is, or may be, applied to pay premiums upon policies of insurance taken out on the grantor's life, and in not holding that said section does not apply to such trusts.

4. In holding that section 219 (h) of the Revenue Acts of 1924 and 1926, under the facts of this case, applies to irrevocable trusts, the income from which is, or may be, applied to pay premiums upon policies of insurance taken out on the grantor's life, where such irrevocable trusts were created prior to the enactment of the Revenue Acts of 1924 and 1926, and in not holding said section does not apply to such trusts.

5. In holding that petitioner derived a benefit from the trust indentures and assigned insurance policies involved in this case, in

that he thereby was relieved from the obligation to pay the annual premiums on such assigned policies, and in not holding that the petitioner derived no benefit whatever under such trust indentures.

6. In holding that petitioner derived a benefit as regards trust indentures, designated by the Board as members 1, 4, and 5, in that he thereby provided for the purchase of securities from his estate and thus afforded some assurance that his executor or administrator in administrating the estate would have available a large amount of cash, and in not holding that the petitioner derived no benefit whatever under such trust indentures.

7. In holding that section 219 (h) of the Revenue Acts of 1924 and 1926 is constitutional under the fifth amendment
67a in so far as applied to the facts of this case, and in not holding that said section, so applied, is unconstitutional under such amendment.

8. In not holding that section 219 (h) of the Revenue Acts of 1924 and 1926, as applied to the facts of this case, is unconstitutional under article 1, section 9 of the Constitution.

9. In including in petitioner's taxable income for the year 1924 the sum of $21,907.51, for the year 1925 the sum of $16,650.00, for the year 1926 the sum of $27,750.00, each amount representing the net income received by the trustees of the trusts under consideration in this case in the respective years under consideration, and in failing to exclude such amounts from the petitioner's taxable income.

10. In finding deficiencies in Federal income taxes and/or surtaxes for each of the years 1924, 1925 and 1926, and in failing to find that there were no deficiencies in petitioner's Federal income taxes and/or surtaxes for such years.

Wherefore, your petitioner prays that this court may review the decision of the Board of Tax Appeals, reverse such decision, and direct the Board of Tax Appeals to enter a decision determining that there is no deficiency in income taxes and/or surtaxes due from this petitioner for the years 1924, 1925, and 1926 and for such other and further relief as may to this court appear proper in the premises.

KINGMAN BREWSTER,
Counsel for Petitioner.

[*Duly sworn to by Kingman Brewster; jurat omitted in printing.*]

68a Acknowledgment of receipt of petition for review by counsel for Commissioner of Internal Revenue.

Filed Jan. 26, 1931. United States Board of Tax Appeals.

Receipt is acknowledged of a copy of the petition for review herein with notice that it was filed on January 26, 1931.

DAVID BURNET,
Commissioner of Internal Revenue.
(Signed) By C. M. CHAREST,
General Counsel, Bureau of Internal Revenue.

Before United States Board of Tax Appeals

Docket

Nos. 29159, 36459, 40915

FREDERICK B. WELLS, PETITIONER

vs.

COMMISSIONER OF INTERNAL REVENUE, RESPONDENT

Narrative statement of evidence

Lodged March 28, 1931, and filed March 30, 1931

I. (In connection with petitioner's fifth assignment of error.) The insurance policies described in the findings and opinion of the Board of Tax Appeals decision were ordinary standard insurance policies which provided that if the premiums were duly paid the insurance company would pay certain sums of money on the happening of specified events, but which policies contained no promise on the part of the insured or the owner of the policy to pay any premiums.

II. (In connection with petitioner's sixth assignment of error.) The trust indentures described in the findings and opinion of the Board of Tax Appeals decision as #1, 4, and 5 contained a provision that the securities purchased from the petitioner's estate by the trustee should be purchased at the appraised value of such securities.

March 28, 1931.

J. S. Y. IVINS,
Counsel for Petitioner.
C. M. CHAREST,
Counsel for Respondent.

Approved and ordered filed this 30th day of March, 1931.
(Signed) LOGAN MORRIS, *Member.*

69a United States Board of Tax Appeals

Praecipe for transcript

Filed March 28, 1931

To the Clerk of the United States Board of Tax Appeals:

You will please prepare, and within the time prescribed by law therefore, or such time as extended by order of the Board of Tax Appeals, transmit and deliver to the Clerk of the Circuit Court of

Appeals for the Eighth Circuit, copies duly certified of the following documents:

1. Docket entries of all proceedings before the Board of Tax Appeals.
2. All pleadings before the Board of Tax Appeals.
3. Findings of fact, opinion and decision of the Board of Tax Appeals.
4. Final orders of redetermination of the Board of Tax Appeals.
5. Petition for review showing notice of filing and acceptance of service by the respondent.
6. The narrative statement of evidence as agreed upon by the counsel for the respective parties.
7. This praecipe for the record.

The foregoing to be prepared, certified and transmitted as required by law and the rules of the Circuit Court of Appeals for the Eighth Circuit.

J. S. Y. Ivins,
Counsel for Petitioner,
c/o Brewster, Ivins & Phillips,
815 Fifteen Street, NW., Washington, D. C.

Receipt of service of a copy of the foregoing praecipe for the record is hereby acknowledged this 27th day of March, 1931.

C. M. Charest,
General Counsel, Bureau of Internal Revenue.

70a–71a [Clerk's Certificate to foregoing transcript omitted in printing.]

72a [Minute entry of argument and resubmission, Nov. 28, 1933, omitted in printing.]

73a The United States Circuit Court of Appeals, Eighth Circuit

No. 9191. November term, A.D. 1932

Frederick B. Wells, petitioner

vs.

Commissioner of Internal Revenue, respondent

On petition to review decision of the United States Board of Tax Appeals

Mr. James S. Y. Ivins (Mr. Kingman Brewster, Mr. James B. Templeton, Mr. O. R. Folsom-Jones and Mr. Richard B. Barker were with him on the brief), for petitioner.

Mr. Charles B. Rugg, Assistant Attorney General (Mr. G. A. Youngquist, Assistant Attorney General, Mr. Sewall Key and Miss Helen R. Carloss, special assistants to the Attorney General, Mr.

C. M. Charest, General Counsel, Bureau of Internal Revenue, Mr. A. H. Fast and Mr. F. L. Van Haaften, special attorneys, Bureau of Internal Revenue, and Mr. Erwin N. Griswold, special assistant to the Attorney General, were with him on the brief), for respondent.

Before Kenyon, Gardner, and Sanborn, Circuit Judges

Opinion

Filed Feb. 4, 1933

KENYON, Circuit Judge, delivered the opinion of the court.

This is a proceeding to review a decision of the Board of Tax Appeals, and involves income taxes for the years 1924, 1925, and 1926. The facts are not in dispute. Petitioner on December
74a 30, 1922, created by separate trust indentures three certain trusts, which will be herein referred to as trusts 1, 2, and 3. On August 6, 1923, he created two additional trusts, referred to as trusts 4 and 5. The income from all these trusts and the principal, if necessary, was to be used by the trustee to pay premiums on certain policies of insurance on petitioner's life. As we deal with these trusts separately hereafter it will be sufficient to say at this point that they were created by irrevocable deeds of trust conveying certain property to a trustee by which benefits were conferred upon certain relatives of petitioner, annuitants and charities. Petitioner did not include for the years in question in his income tax return the dividends received from the securities assigned to the trustee and used to pay the premiums on the life insurance policies. The Commissioner of Internal Revenue made a deficiency assessment of additional income taxes for these years, including in petitioner's taxable income that part of the dividends received by the trustee upon the securities constituting the corpus of each trust and used to pay the premiums on the insurance policies, claiming to do so in accordance with the provisions of section 219 (h), ch. 234 of the Revenue Act of 1924, and section 219 (h), ch. 27, act of 1926. Sections 219 (g) and (h) which are closely related are as follows:

"(g) Where the grantor of a trust has, at any time during the taxable year, either alone or in conjunction with any person not a beneficiary of the trust, the power to revest in himself title to any part of the corpus of the trust, then the income of such part of the trust for such taxable year shall be included in computing the net income of the grantor.

"(h) Where any part of the income of a trust may, in the discretion of the grantor of the trust, either alone or in conjunction with any person not a beneficiary of the trust, be distributed to the grantor or be held or accumulated for future distribution to him, or where any part of the income of a trust is or may be applied to the payment of premiums upon policies of insurance on the life of the grantor (except policies of insurance irrevocably payable for the purposes

and in the manner specified in paragraph (10) of subdivision (a) of section (214), such part of the income of the trust shall be included in computing the net income of the grantor."

75a The policies on which premiums were paid were concededly not for the purposes specified in section 214 (a) (10) of the Revenue Act of 1924.

The Board of Tax Appeals sustained the deficiencies found by the Commissioner for the years 1925 and 1926, and increased the deficiency for 1924 to cover an error made by the Commissioner. The basis of its decision is thus expressed:

"As to the contention that the trust corpus and the insurance policies were no longer a part of the petitioner's estate nor subject to his debts, it seems true that petitioner by the trust indentures and by the assignments of insurance policies has parted with all right to revest such property in himself. But by the terms of the trust indentures he has provided that the income from the trust corpus shall discharge him from obligations which he had assumed and by the same indentures he has disposed of the proceeds of the insurance policies upon his death just as effectively as he could have done had he disposed of the same by will as a part of his personal estate."

When the case reached this court, being in doubt as to the questions involved, it certified the matter to the Supreme Court, and asked instructions as to these questions:

"Question 1. Does section 219 (h) of the Revenue Acts of 1924 and 1926 apply to irrevocable trusts?

Question 2. Is section 219 (h) of the Revenue Acts of 1924 and 1926 constitutional as applied to irrevocable trusts created prior to the passage of the Revenue Act of 1924?

Question 3. On the facts stated, did the petitioner receive income arising under the trusts during the years 1924, 1925, and 1926?"

May 2, 1932, the Supreme Court dismissed the certificate on the ground that the questions were not properly framed and that the statement of facts therein was inadequate. Wells v. Commissioner of Internal Revenue, 286 U.S. 529.

We shall therefore attempt to answer our own questions duly impressed with the realization that it is more difficult to answer questions than to ask them.

76a After the return of the certificate to this court a motion by respondent for reargument was granted, and it was directed that a supplemental record be submitted showing the five trusts and the insurance policies involved. This was done and respondent filed supplemental argument raising additional questions, viz, that trusts 2 and 3 were invalid and could be revoked at any time by petitioner, and that he retained substantial interest in trusts 2, 3, 4, and 5. It will make for clarity, we think, first to discuss fully the law with reference to Trust No. 1, concerning which the supplemental argument raises no new question, and then determine whether the other four trusts are assimilable on their facts and the law to Trust No. 1.

This trust was executed December 30, 1922, and is designated "Frederick B. Wells trust for the benefit of Mary Wright Peavy Wells." She was his daughter. It was duly accepted by the trustee, Minneapolis Trust Company. By the trust instrument petitioner assigned, transferred, and conveyed to the Minneapolis Trust Company, of Minneapolis, Minnesota, as trustee, "Certificate no. 8 for 1,000 shares of the six percent cumulative preferred stock of the Wells Securities Company, a Delaware corporation, said stock being of the par value of $100.00 per share", to "take possession of, manage, and control the trust estate, and demand, receive, and collect the income and dividends therefrom, and invest and reinvest the trust estate, and * * * retain the corporate stock herein conveyed as long as it deems best, or * * * sell and convey the same, at such prices, in such parcels, and upon such terms as it may deem best." Reinvestments were to be made only in such securities "as are now authorized by the laws of the State of Minnesota for the investment of funds by trust companies."

The income of the trust estate, and as much of the principal as should be necessary, was to be used to pay the net annual premiums on ordinary life policy no. 472778 of the Connecticut Mutual Life Insurance Company, of Hartford, Connecticut, issued December 30, 1922, for $100,000.00, on the life of petitioner and payable to the "Minneapolis Trust Company, trustee," or its successors or assigns, as beneficiary. By the terms of the trust the trustee was given full power and authority "to deal with the said Insurance Company and with the said insurance in any manner that it may deem for the best interests of such Minneapolis Trust Com-
77a pany, as trustee, and may borrow money thereon, or may avail itself of any of the conditions, privileges, or benefits provided by the terms of the said policy of life insurance."

The policy itself contained the usual provisions for dividends to be either (1) paid in cash, (2) left with the company to mature the policy as an endowment, (3) applied on premiums, or (4) converted into paid-up additional insurance; for nonforfeiture benefits in the form of cash value payable on surrender or convertible into paid-up or extended insurance; for policy and premium loans; and for optional settlements at maturity. Dividends were expressly made payable to the "Minneapolis Trust Company, trustee." In the event of the dividends being left to mature the policy as an endowment the face value thereof was payable to the "payee," which was, of course, the Minneapolis Trust Company, as Trustee. The plan of the policy could be changed "upon written request by the insured with the beneficiary," * * * and the mode of settlement could be changed upon "application by the insured with the beneficiary, * * * or upon the application by the payee at the maturity of this policy." In his application petitioner specifically renounced all power to change the beneficiary, and designated the Minneapolis Trust Company, trustee, as the party to

whom all life or death benefits should be made payable and who should exercise the options granted for change in plan, for paid-up or extended insurance, and for premium loans.

Any excess of the income of the trust estate over the amount needed to pay the first and successive net annual premiums upon the above policy of life insurance was to be accumulated until sufficient to pay one additional net annual premium and after that was to be paid, in the discretion of the trustee, at the end of each year, to Mary Wright Peavey Wells, daughter of petitioner.

Upon the death of petitioner the trustee was to collect the proceeds of the policy and purchase therewith from the executor of petitioner's estate securities thereof to the appraised value of $100,000.00. The securities so purchased were thereupon to become a part of the trust estate, the whole income of which was thenceforth to be payable to the said Mary Wright Peavey Wells, for her life.

Upon her death the trust was to cease and determine, and the
78a corpus be paid over to whomsoever she should, by her will, appoint to receive it. Should she fail to exercise her power of appointment the corpus was to go "to her issue living at the time of her death, and to the issue of a deceased child by right of representation." Should she neither exercise her power of appointment nor leave issue, then the trust estate was to be "paid over and distributed in equal parts to my sons Thomas Bucklin Wells, born August 26th, 1902, Frank Hutchison Peavey Wells, born September 29th, 1905, and Frederick Brown Wells, Jr., born November 6, 1906, or the survivors or survivor of them, upon the date when the youngest of my said sons or the youngest of the survivors attains the age of twenty-five years." This trust, and the others likewise, were completed and the property transferred prior to the passage of the 1924 Revenue Act, and no power of revocation, alteration, or modification is reserved to petitioner as settlor either alone or in conjunction with anyone else.

It is the theory of petitioner as to this and the other trusts that he parted with all his interest in the securities transferred to the trustee; that the trustee under the terms of the trust was authorized and directed to use the income from these securities which constituted the corpus of the trust to pay premiums upon insurance policies on the life of the grantor, which policies were transferred to the trustee, with no right on the part of petitioner to change the beneficiary named therein—the trustee; that all control over the securities and the policies of insurance was with the trustee, and no control whatever reserved to petitioners; that under the terms of the various trusts he had no right to revoke the same; that the conveyance of the corpus of the trust was absolute and the ownership of the insurance policies became absolute in the trustee; that the trusts were created and completed prior to the passage of the act under which respondent assessed taxes to petitioner as alleged income taxes for the years in question. Petitioner contends that these trusts were not created for the purpose of evading provisions of possible

future statutes, but for the purpose of legitimately reducing taxes under the existing statutes; that the trusee received the income and paid the taxes thereon, and that section 210 (h) is applicable to this situation violates the fifth amendment to the Constitution.

It is respondent's theory that subdivision (h) of section 219 is not ambiguous and requires no construction by a court, that it ap-
79a plies to irrevocable as well as revocable trusts; that petitioner received the benefit of the trusts each year measured partly by the premiums due and paid for him by the trustee, that his interest did not cease with the transfer of the policies since a failure of the trustee to pay the premiums promptly would defeat the purpose of the trust. Further, that grantor's estate received a benefit from the operation of certain of the trusts by the provision that the trustee should with the insurance money buy securities from petitioner's estate at their appraised valuation, thus making available to his estate large sums of cash, that if petitioner can escape a tax in this manner he has accomplished by indirect means that which the law would not permit him to accomplish directly.

It is suggested in respondent's brief that the final contingent remainder in Trust No. 1 is in violation of the common law rule against perpetuities in force in Minnesota, in that Wells may be presumed capable of having another child whose interest might not vest within lives now in being plus twenty-one years. It seems clear that all the interests that may have vested in the remainder are identified and in being, and that if a child of Wells might yet be born it could take no interest in the final contingent remainder of this trust. Of course Wells' child might predecease him, and the trust estate might revert to Wells for want of a cestui, or as heir of his child, but we think this is a possibility that cannot be considered a present property interest. There was the same possibility in Coolidge v. Long, 28 U.S. 582, and Reinecke v. Northern Trust Co. 278 U.S. 339, and in both cases the Supreme Court held that since the settlor had not reserved power to revoke the trust the transfer of all that ever was or ever would be transferred was complete as soon as the trust was made. This is true of the situation here.

Assuming that petitioner divested himself as completely as possible of any interest in or power over the property comprising the trust estate and had no interest in or control over the insurance policy, the chief object of the trust, can the income of the trust, irrevocable in its nature, be made taxable to the grantor by an act of Congress passed subsequent to its creation?

It is clear that Congress intended section 219 (h) to be applicable to irrevocable as well as to revocable trusts—otherwise
80a the statute would be redundant. Section 219 (g) is applicable to revocable trusts, and there would be no need of 219 (h) if it was not applicable to irrevocable trusts. The words of a statute should be given their ordinary meaning. We see no ambiguity in this statute and nothing to construe. Its meaning is plain and shows

the intention of Congress. We shall not spend much time on the argument as to the retroactivity of the statute affecting its constitutionality. Congress was not attempting to tax the creation of a trust as a transfer, but the income therefrom. Income is taxable as of the time it is severed from the corpus that produces it. Income produced even before the ratification of the sixteenth amendment has been held taxable as of a later period. Lynch v. Hornby, 247 U.S. 339. Mere retroactivity of a congressional taxing statute does not make it unconstitutional. That is settled by many cases. Brushaber v. Union Pacific R. Co., 240 U.S. 1; Cooper v. United States, 280 U.S. 409; Woods v. Lewellyn (C.C.A. 3) 252 F. 106; Frew v. Bowers (C.C.A. 2) 12 F. (2d) 625.

Of course the income from the securities of the trust during the years in question was properly taxable The inquiry is whether it was taxable to petitioner, and the question is one of constitutional power—not of retroactivity. Can Congress provide that the income of an irrevocable trust created prior to the passage of the taxing act shall be taxed to the settlor on the ground that it is his income even if he has legally put himself in a position where he would never receive it? That is the concrete question here. Can Congress prevent a party from conveying away his property or raise up a fiction by which if he does so he will yet be treated as if he had not? We are dealing here it is true with trusts created prior to the passage of the taxing statute, and hence should confine ourselves to that situation, regardless of whether we may think it material whether created before or after, and we are not unmindful of the rule often announced by the Supreme Court that a construction of a statute reasonably possible which would uphold it should be adopted.

Eisner v. Macomber, 252 U.S. 189, 207, adopts the definition of income as follows: "'Income may be defined as the gain derived from capital, from labor, or from both combined', provided it be understood to include profit gained through a sale or con-
81a version of capital assets, in which it was applied to the Doyle case." See also United States v. Phellis, 257 U.S. 156.

In Van Meter v. Commissioner of Internal Revenue (C.C.A. 8) 61 Fed. (2d) 817, Judge Stone said:

"The Supreme Court has definitely determined that Congress has the power to tax the earner of income therefor, irrespective of whether it is paid to someone else. * * *

"The 'earner' of income is one whose personal efforts have produced it; who owns property which produced it or a combination of the two. * * *

"The rule and intent of the taxing statutes is that the earner of income which he might and, normally, would receive and enjoy for himself is not relieved because he chooses not to receive or not to enjoy it, and this is not necessarily changed by such deprivation taking the form of an obligation legally binding him thereto.

If there exists a legal relationship of the earner to others which results in the earnings (in part or whole) being for the benefit of others than the actual earner, the statutes do not attempt to tax the ea ner for such income as he was not earning in his own right, but where the earner of the income does nothing more than transfer the income earned in his own right to another, even though such disposal be in advance of the earning thereof * * *, or where he retains any power of control over the income earning property or the income therefrom * * *, such income is taxable to him within the intent of the statute."

This case was one where the income was assigned by the "earner" thereof in advance of its receipt, and of course such assignment did not preclude its taxation to the one who but for the assignment would have received and enjoyed it. Lucas v. Earl, 281 U.S. 111; Burnet v. Leininger, 285 U.S. 136.

The situation would be very different if the earner were in such legal relation with another that he would be prevented from effectively dealing with the income.

Since the former argument of this case the Supreme Court has decided two cases of importance bearing we think on the question here. In Hoeper v. Tax Commission, 284 U.S. 206, it held
82a that a Wisconsin income tax statute authorizing an assessment against a husband of a tax computed on the combined total of the income of his wife and himself and augmented by surtaxes resulting from the combination, under the law of the State of the huband having no interest in the income of the wife, was violative of the fourteenth amendment. We quote from page 215 this significant language: "We have no doubt that, because of the fundamental conceptions which underlie our system, any attempt by a state to measure the tax on one person's property or income by reference to the property or income of another is contrary to due process of law as guaranteed by the fourteenth amendment. That which is not in fact the taxpayer's income cannot be made such by calling it income." And in Heiner v. Donnan, 285 U.S. 312, the court held that the restraint upon legislation by the due process clause of the fourteenth amendment and the fifth were the same.

In Langley v. Commissioner of Internal Revenue (C.C.A. 2), 61 F. (2d) 796, the court had before it section 166 of the Revenue Act of 1928 providing that income from a trust shall be taxed to the grantor if he has at any time during the taxable year the power to revest in himself title to the corpus of the trust. The purpose of that section was to prevent an evasion of surtaxes just as it is the purpose of 219 (h). As the grantor could not by her own act revest herself with title to the property during the year 1928 within the terms of the trust and had no control over the principal until the termination of the trust in that year, it was held she had lost control of the income during the period of taxation, and that she was not subject to taxation within the purview of section 166.

The Board of Tax Appeals in Mabel A. Ashforth, et al. v. Commissioner, 26 B.T.A. 1188, decided October 12, 1932, has in part taken a somewhat different view of the trust question than it did in the present case. That case concerned section 219 (g) of the Revenue Act of 1926, supra, and the Board of Tax Appeals held that the income of the trust there involved should not be taxed to the grantor, although he had reserved the power of revocation, which however was subject to a condition, to wit: notification to the trustees prior to the beginning of the taxable year, or within the "first fifteen
83a days in December in the calendar year next preceding"; and that as he had failed to notify the trustees of an intention to revoke or change the trust within either taxable year the income was not subject to the grantor's "unfettered command," and he was not free to enjoy it during the taxable year.

A case bearing some similarity to the instant case is Reinecke v. Smith (C.C.A. 7) 61 F. (2d) 324, arising under section 219 (g), supra. The court there lays some stress upon the fact that the trusts were created before the passage of the act. It points out that when the trusts were established the grantor was not taxable on the income thereof, as the power to revoke the same could not be exercised by him alone, the consent of the trustee being essential to revocation. The court said that by the creation of the trusts the grantor had parted with his interest in and control over the income of the trusts, and that while the power of Congress as to the taxation of the income of trusts under the unfettered control of the grantor, or which may be created in the future was broad, that nevertheless that which was not the income of a taxpayer and which he could not make a part of his income could not by legislative power be made to be included in the income; that it amounted to confiscation and offended the fifth amendment.

In DuPont v. Commissioner of Internal Revenue (opinion filed January 6, 1933) (C.C.A. 3), the court considered a situation where petitioner had executed nine trust agreements for the benefit of his family, transferring thirty-two policies of life insurance and certain shares of stock to the trustee, the income to be applied to the payment of premiums on the insurance policies. The court construes subdivision (h) of section 219, supra, and the question we are considering as applied to the facts before it. The same questions presented here were raised there by petitioners. The court held that the term trust as used in the statute included revocable and irrevocable trusts, that Congress had not exceeded its powers in taxing the income of such trusts to the grantor. The facts are quite different however in the DuPont case from the facts here. The trusts there were for three years with privilege of renewal or nonrenewal in grantor, and the trust agreements provided that if the trusts termi-
nate before death of petitioner the stock transferred to
84a the trustee is to be returned to him. The court considered that petitioner had merely postponed his right for the term of the trusts to command the fund and to terminate the existence of the

trust. In the trust there the control of the propetry had only been temporarily placed beyond the control of the grantor. Had the securities been given to a trustee with no power in the settlor ever to receive them back we apprehended the decision might not have been the same. If the facts here were the same as there we should reach the same conclusion.

In Corliss v. Bowers, 281 U.S. 376, subsections (g) and (h) of 219 of the Revenue Act of 1924, were involved. The instrument there creating the trust reserved power to modify, alter, or revoke it. There was no doubt, the court said, that petitioner reserved the power at any moment "to abolish or change the trust at his will," and the court says, p. 378, "Still speaking with reference to taxation, if a man disposes of a fund in such a way that another is allowed to enjoy the income which it is in the power of the first to appropriate it does not matter whether the permission is given by assent or by failure to express dissent. The income that is subject to a man's unfettered command and that he is free to enjoy at his own option may be taxed to him as his income, whether he sees fit to enjoy it or not." The power to revoke the trust in this case had not been exercised and the income therefrom had in fact been paid over to the beneficiary. This case would seem to settle the proposition that subsections (g) and (h) of section 219 of the Revenue Acts of 1924 and 1926 are constitutional as applicable to the income of revocable trusts whether created prior or subsequent to the passage of the first of these acts.

Burnet v. Leininger, 285 U.S. 136, was a case where the husband, member of a partnership, had agreed with his wife that she should be an equal partner and share equally with him the profits and losses. His distributive share of the net income of the partnership it was held was taxable to him, and that as the wife's interest was derived from and dependent upon his distributive share the taxation of the whole as his income was not unconstitutional. It was a different situation from that presented in Hoeper v. Tax Commission, supra, where the income of the wife was from her separate estate.

85a In Heiner v. Donnan, 285 U.S. 312, the court discusses the presumption clause of section 302 (c) of the Revenue Act of 1926, and holds it cannot be sustained as imposing a gift tax because the intent of Congress was to enact the provision as an incident of the death tax, and further that as a gift tax it would be so arbitrary and capricious as to violate the due process clause of the fifth amendment. The value of the estate had come into being after the gift had become complete and irrevocable, and the court says the gift was no part thereof, and at page 332, "to impose liability for the tax, as a gift tax, upon the estate, as they in terms require, is, in effect, to exact tribute from the gains or property of one measured by the gains or property of another."

In a very recent opinion of the Supreme Court (January 9, 1933) in Guaranty Trust Co. v. William H. Blodgett, tax commissioner, Justice Sutherland refers to the holding in Coolidge v. Long, 282

U.S. 582, saying, "There a similar tax was held bad because the State statute imposing it was passed after the creation of the trusts"; and refers with approval to the statement of that case, "Undoubtedly the State has power to lay such an excise upon property so passing after the taking effect of the taxing act." In Coolidge v. Long, supra, it was held that under the due process clause of the fourteenth amendment a gift cannot be taxed by a State under a law that was enacted after the gift was fully consummated.

In Chase National Bank v. United States, 278 U.S. 327, one Brown, after the passage of the Revenue Act of 1921, had taken out three policies of insurance, reserving the power to change the beneficiary and paying the premiums himself. Upon his death the amount of this insurance, less $40,000.00, was included in his estate in measuring the transfer tax thereon and this was upheld as an excise or privilege tax.

In Untermyer v. Anderson, 276 U.S. 440, it was held that the gift tax provisions of the Revenue Act of June 1924 were to be construed as applying to gifts made at any time during that year, and that as to gifts not made in anticipation of death and fully consummated prior to the passage of the act, the provisions were arbitrary and invalid under the due process clause of the fifth amendment.

86a In Lewellyn v. Frick, 268 U.S. 238, the policies of insurance sought to be included in decedent's estate under section 402 (f) of the Revenue Act of 1918 had been taken out before the revenue act was passed, and failed to reserve power to change the beneficiary, or else had been transferred by assignment. At page 251 of the opinion Justice Holmes raises doubt about the validity of such tax, saying: "It is enough to point out that at least there would be a very serious question to be answered before Mrs. Frick and Miss Frick could be made to pay a tax on the transfer of his estate by Mr. Frick. There would be another if the provisions for the liability of beneficiaries were held to be separable and it was proposed to make the estate pay a transfer tax for property that Mr. Frick did not transfer. Acts of Congress are to be construed, if possible, in such a way as to avoid grave doubts of this kind."

In Blodgett v. Holden, 275 U.S. 142, it was held that insofar as the Revenue Act of 1924 undertakes to impose a tax on gifts if consummated before its provisions came before Congress it is invalid under the due process clause of the fifth amendment. Even under the doctrine of the dissenting opinion in that case, reading the statute to tax gifts only that were made thereafter, there would be authority for the petitioner's position here as to this trust, which was in the nature of a gift, and was fully consummated prior to the passage of the act.

In Rosenwald v. Commissioner of Internal Revenue (C.C.A. 7) 33 F. (2d) 423, it was held that when taxpayer had delivered to a charitable trust negotiable Liberty loan bond coupons as a gift, the coupons were not taxable against him as income.

Some of the cases we have referred to deal with the power to levy a transfer or succession tax at death, and they bear analogy to the

question here presented. The relation that must exist between the taxpayer and the income for which he is taxable should be no different than the relation which must exist between a decedent and the property by which a transfer or succession tax is to be measured, and the cases we have cited lead, we think, to the conclusion that the trust property under Trust No. 1 could not have been subjected on petitioner's death either to a Federal transfer tax or a State succession tax. If the trust property may not be
87a made a part of petitioner's estate at death it is difficult to understand how the income therefrom may be part of his income during life.

We have assumed this far that under Trust No. 1 petitioner had irrevocably parted with the securities and reserved no control whatever over them or the income from them. If in fact petitioner has reserved any power of control over the income earning property or the income therefrom then such income could be taxed to him. Has he done so?

Income to be subject to assessment for taxation need not necessarily be received in money. Brunton v. Commissioner of Internal Revenue (C.C.A. 9), 42 F. (2d) 81; Eisner v. Macomber, 252 U.S. 189.

Is there any taxable relation between the property and petitioner as the recipient of such benefits therefrom as could be considered income? There was evidently no earner relationship between petitioner and the income of Trust No. 1. It was produced neither by his labor, his property, nor property over which he had an unfettered command; nor was there a mere assignment of income within the rule of Van Meter v. Commissioner of Internal Revenue, supra.

The Board of Tax Appeals in holding that he had power over the trust property so that in a fact sense he has received benefit therefrom gave considerable weight to this provision of the trust instrument:

"4. Upon my death, the trustee shall collect the principal sum named in the said policy of life insurance, and shall with the proceeds thereof, purchase from the executor of my estate, securities belonging to the said estate, amounting to the sum of one hundred thousand dollars ($100,000.00), at the appraised value of such securities, and such securities shall thereupon become and be a part of the trust estate hereby created. My trustee shall take possession of, manage and control the securities so purchased from my executor, and shall demand, receive, and collect the income and dividends therefrom, and invest and reinvest the trust estate, and may retain the same as long as it deems best, or may sell and convey the
88a said securities at such prices, in such parcels, and upon such terms as it may deem best, but in the event that it sells the said securities, the proceeds of such sale or sales shall be reinvested only in such securities as are now provided by the laws of Minnesota for the lawful investment of the funds of trust companies."

We think it the only provision or circumstance upon which any reasonable argument can be made that the petitioner might have secured some taxable benefit from the trust.

From one viewpoint it would seem that petitioner has accomplished exactly what he would have accomplished if the policy had been payable directly to his estate.

The Board of Tax Appeals was in error in holding that the income from the trust corpus discharged petitioner from obligations which he had assumed—that is the assumption of premium payments on the insurance policies. There is no legal obligation to pay a premium on an insurance policy and the owner may permit it to lapse.

There is of course a moral and social obligation to provide for one's family even after the earner is gone, and insurance is a means of meeting that obligation. If a trust were established the income from which was to be used to pay the necessary household expenses of the settlor, that part of the income that would be so used would be of benefit to him, for there is a legal duty to pay for the family necessities: there would be an enrichment, and the case would be assimilable to Old Colony Trust Co. v. Commissioner of Internal Revenue (C.C.A. 5), 279 U.S. 716, upon which the Board of Tax Appeals banked heavily, and United States v. Boston & Maine R. Co., 279 U.S. 732.

This provision which we are considering obviously will not enrich petitioner's estate, and is therefore to be distinguished from the situation that would exist had the proceeds of the policy been made payable to the estate. The provision merely anticipates the situation that will exist on petitioner's death, when the trustee will be in need of long-term investments in which to place the proceeds of the policies, and petitioner's estate will possibly be in need of ready cash. The trustee will be a party to the purchase, with a voice in the selection of the securities to be purchased, and as the
89a purchase price is to be the appraised value of the securities there is no possibility by which worthless and unsalable securities will be unloaded from petitioner's estate onto the trustee by virtue of the trust provision. Possibly petitioner had such confidence in his own investments that he was motivated by a desire to have the proceeds of the policy invested soundly and wisely in the interests of the trust estate. At any rate such benefit as will inure by the provision to his estate will be a convenience rather than an enrichment, and will in no way be available to petitioner while living or to his estate in bankruptcy, should he become bankrupt. How is such a future convenience to be measured, either in money or in money's worth, as a present asset of petitioner's? And to be taxable as income, benefits must above all be measurable.

In Hoeper v. Tax Commission of Wisconsin, et al., supra, the majority of the court were no doubt cognizant of the fact that the income of the wife which they held not taxable to the husband,

would in the language of Mr. Justice Holmes expressed in dissent "in every probability * * * make his (the husband's) life easier and help to pay his bills." We think no control over the insurance policy was retained by the provision in question.

The fact is not important that by the terms of the policy insured was to join with the beneficiary in any request that should be made for a change in the plan of the policy or mode of settlement. This is not the equivalent of an interest in or control over the policy, and did not take the control of the policy from the trustee.

It is urged that the whole purpose of petitioner's plan in the creation of these trusts was to evade taxes. Undoubtedly the purpose was to relieve himself from a part of a large surtax. If he acted strictly within the law it probably could not be deemed tax evasion. As said by Mr. Justice Holmes in Bullen v. Wisconsin, 240 U.S. 625, 630: "We do not speak of evasion, because, when the law draws a line, a case is on one side of it or the other, and if on the safe side is none the worse legally that a party has availed himself to the full of what the law permits. When an act is condemned as an evasion what is meant is that it is on the wrong side of the line indicated by the policy if not by the mere letter of the law." The reports of congressional committees show that Congress passed the act in
90a question for the purpose of preventing tax evasions. Evidently this method of lessening surtaxes had become somewhat prevalent. It is unfortunate that some people of great wealth are not willing to bear their fair part of the burden of taxation and are willing to place the burden which they should carry upon others. If they can do so within the law courts are powerless to prevent it. It is however preferable that there be some tax evasion than that rights guaranteed by the Constitution be lightly set aside. Hoeper v. Tax Commission, supra; Heiner v. Donnan, supra. As said in Clapp v. Heiner (C.C.A. 3) 51 F. (2d) 224, 225, "Even since the statute of uses, the trust has served as a means of escape from the embarrassments of ownership. Its employment to avoid this particularly onerous incidence was inevitable. So the estate was divided among the family and the surtax became the inverse reward of fertility. Taxation being by definition dependent upon beneficial receipt, the Government had no answer for this procedure unless it was willing to declare such transactions presumptively fraudulent." Congress may clearly tax such a transaction as that involved in the instant case for what it really is, a gift inter vivos; but so long as petitioner is willing to relinquish the advantages in order to avoid the burdens of continued ownership and effectively does so Congress may not continue to impose the burdens.

We are unable to reach any other conclusion as to Trust No. 1 than that petitioner in creating the trust divorced himself from any beneficial interest in the insurance policy, that he retained no control of any kind over it nor over the corpus of the trust, and that the payment of the insurance premiums by the trustee resulted in no enrichment to him or his estate; that the income sought to be

taxed to him was not his income and did not benefit him, that to tax the same to him under section 219 (h) is beyond the power of Congress and violative of the Constitution.

Trust No. 2

The instrument creating this trust was executed December 30, 1922, and designated as being for the benefit of Shirley Irene Lindstrom. By it petitioner assigned, transferred, and conveyed to the Minneapolis Trust Company and Leontine Lindstrom, as trustees, "certificate number 3 for seventy-five (75) shares, par value one hun-
91a dred dollars (100.00) per share, of the six percent (6%) cumulative preferred stock of the Wells Securities Company," $450.00 in cash, and ordinary life policy no. 591935 of the Massachusetts Mutual Life Insurance Company, of Springfield, Massachusetts, issued November 27, 1922, for $10,000.00, on the life of petitioner and payable to his executors, administrators, or assigns as beneficiary. The powers of management and of investment and reinvestment given the trustees, along with the limitations imposed thereon, were the same as those provided by Trust No. 1, described above. The income of the trust estate, and as much of the principal as should be necessary, was to be used "to pay the net annual premiums falling due upon that certain policy of life insurance hereinbefore conveyed and described." The trustees were given full power and authority "to deal with the said Insurance Company and with the said insurance, in any manner that they may deem for the best interests of the said Shirley Irene Lindstrom, and may borrow money thereon, or may avail themselves of any of the conditions, privileges, or benefits provided by the terms of the said policy of life insurance."

The policy thus assigned as a part of the trust estate was not unlike, in its general provisions, the policy described in connection with Trust No. 1, except that it was originally payable to petitioner's executors, administrators or assigns, and the life benefits and powers belonged originally to petitioner himself. But on the face of the policy there was indorsed the following:

"Springfield, Mass., January 16, 1923. The proceeds of this policy are hereby made payable, at the death of the insured, in one sum to the Minneapolis Trust Company and Leontine Lindstrom, of Minneapolis, Minnesota, as trustees, or their successors in trust, in accordance with trust agreement dated December 30, 1922, without liability on the part of the Insurance Company to see to the carrying out of the terms of the trust. The right to make future changes of any beneficiary herein, without the consent of the beneficiary or beneficiaries herein, has been revoked and canceled; a legal request therefor having been received.

"(Signed) ALBERT D. SHAW,
Asst. Secy."

By this provision coupled with the assignment in the trust instrument of the policy itself to the trustees petitioner was com-
92a pletely divested of the same rights, powers, and life benefits that he had renounced from the beginning with respect to the policy in Trust No. 1; and the proceeds of the policy became equally payable on maturity to the trust named.

The trust instrument next provided that upon petitioner's death the trustees were to "pay over and deliver to the Minneapolis Foundation, a corporation organized for charitable and benevolent purposes under the laws of the State of Minnesota, with principal place of business in Minneapolis, Minnesota, the certificate of corporate stock in the Wells Securities Company, hereinbefore described and conveyed, or the securities held in lieu thereof and purchased with the proceeds of the sale of the aforesaid stock certificate, which part of the trust estate shall be held by the said Minneapolis Foundation, under the trust hereinafter defined, for the benefit of Wells Memorial, an unincorporated charity hereinafter identified." The perpetual trust thus created was further defined as follows: "The net annual income of the trust estate shall be paid to the rectors, wardens and vestrymen of St. Marks Church, in Minneapolis, Minnesota, a corporation, to be used by said corporation for the sole purpose of carrying on the work of the Wells Memorial, a definite charity conducted by the said church corporation." However, should the Wells Memorial "cease to be conducted as a definite charity under its present name, or * * * cease to discharge substantially the functions which it now discharges," the income of the trust estate was to belong beneficially "to the Minneapolis Foundation, for its own uses and purposes."

The above perpetual trust was to come into enjoyment at an earlier date than the death of Wells in the event of the prior decease of Shirley Irene Lindstrom, beneficiary of the living trust hereafter to be described, by virtue of the following provision:

"6. If the said Shirley Irene Lindstrom shall predecease me, this trust shall fail and determine upon her death, and the trustees herein named shall forthwith surrender the said policy of life insurance for cancellation, collect its cash surrender value, and pay the same over to the Minneapolis Foundation, a corporation hereinbefore described, to which corporation I hereby presently give and convey the same, not for its own use and benefit, however, but upon the trusts hereinafter defined."

93a In the event, however, of Shirley Irene Lindstrom's outliving Wells, the trustees were upon the death of Wells to collect the proceeds of the policy of insurance, and thereafter to "invest and reinvest the same within their discretion, and may sell and resell the securities so purchased." The following provision was then made for the payment over of the income and principal of the trust estate remaining in the hands of the trustees:

"After my death, the trustees shall disburse the annual income from that part of the trust estate remaining in their lands after the acceptance by the Minneapolis Foundation of the trust hereinafter defined, to wit: The income upon the investment of the proceeds of the life-insurance policy hereinbefore described and conveyed, and so much of the principal from time to time as may, in their discretion, be necessary for the support, maintenance, and education of the said Shirley Irene Lindstrom, * * * the trustees shall pay over to Shirley Irene Lindstrom, when she attains the age of twenty-five years, the entire trust estate in their hands then remaining, but they may in the exercise of their discretion, pay the same over when she attains the age of twenty-one years."

No provision was made for a gift over of the proceeds of the insurance policy remaining in the hands of the trustees in the event of Shirley Irene Lindstrom's surviving Wells but not attaining the age of twenty-one years.

The trust instrument concluded with provisions applicable to both the living and perpetual trusts, one of which was:

"The living trust, that is to say, the trust herein limited upon my life for a shorter period upon the happening of the contingencies named, wherein the Minneapolis Trust Company is trustee, and the perpetual trust presently defined but to take effect thereafter, wherein the Minneapolis Foundation is trustee, shall both be administered under the direction of the court as by statute provided, but each is separate and distinct from the other and of like effect as though created and defined by separate instruments."

The provisions of the above trust instrument were accepted by the Minneapolis Foundation as well as by the trustees of the living trust. As to this trust respondent makes the contention, in addition to those made and considered in reference to Trust No. 1, that the
94a perpetual trust is void under Minnesota law, that petitioner may therefore at any time, in accordance with the terms of the trust instrument, retake possession of the entire trust estate, and that the entire trust is therefore a revocable one, the income of which is taxable to petitioner under Corless v. Bowers, 281 U.S. 376.

This question was not presented to the Board of Tax Appeals nor upon the former submission of the case in this court. The theory is opposed to the holding of the Board of Tax Appeals that petitioner had parted with all right to revest the trust property in himself.

It is observable that petitioner creates virtually two trusts—one the living trust, of which the Minneapolis Trust Company is trustee—the other a perpetual trust, or which the Minneapolis Foundation is trustee, and in the provisions applicable to both trusts is this:

"Should the accumulation of income provided in the living trust be for any reason declared void, such accumulation shall be paid over and delivered to the Minneapolis Foundation for its own uses and purposes, but should either the living trust or the perpetual trust

herein defined be declared void as a trust, then the trust estate shall revert to myself, if living; otherwise to my heirs, executors, administrators, or assigns."

When this trust was established section 6701, Statutes of Minnesota 1913, provided that "Uses and trusts except as authorized and modified in this chapter, are abolished." Section 6710 provided by subsection 5 "that express trusts could be created for certain purposes." That section is:

"To receive and take charge of any money, stocks, bonds, or valuable chattels of any kind and to invest and loan the same for the benefit of the beneficiaries of such express trust; and the district court of the State shall, upon petition and hearing have power to appoint a trustee for the purpose herein set forth, requiring such trustee to give such bond for the faithful execution of such express trust as to the court may seem right and proper; and express trusts created under the provisions of this paragraph shall be administered under the direction of the court."

Before the first enactment of section 5, which was in 1875, no trust in personality could be created in Minnesota, all trusts except
95a those particularly authorized by statute being abolished. Reliance is placed by respondent upon some early cases, the principal one being Shanahan v. Kelly, 88 Minn. 202, decided in 1903, which held that since 1875 all express trusts, including charitable trusts in personal property except as authorized by the statute, were abolished the same as trusts in real estate, and that the trust attempted to be created, which could be sustained if at all only under subdivision 5 of section 4284, chapter 43 of the Minnesota statutes then in force as to uses and trusts, was not sufficiently certain as to beneficiaries to come under subsection 5. In Watkins v. Bigelow, 93 Minn. 210, it was held that a gift to a corporation with directions as to the use or management of the subject matter of the gift consistent with corporate purposes of the donee was not a gift in trust but an absolute one to the corporation within the meaning of the statute of uses and trusts. The case of Young Men's Christian Ass'n of Minneapolis v. Horn, 120 Minn. 404, 139 N.W. 805, is most enlightening on this subject. By the terms of the trust instrument there considered certain real and personal property had been conveyed to the defendant trustee "to and for the benefit of the Young Men's Christian Association of the city of Minneapolis, a corporation of the State of Minnesota, the same to be received and used by said corporation in perpetuity in carrying out its purpose of providing boys and young men, members of the association, with education along industrial lines." The court concluded that the trust in question was not invalid. After referring to the various Minnesota cases, including those cited by respondent, the court says:

"Under the doctrine of these cases, we think that the gift of the income of the bond, covered by the first trust herein involved, must be sustained, notwithstanding that the donor intended that the

young men and boys mentioned should receive the ultimate benefit of the gift. The language of the donation plainly indicates a gift of the proceeds of the bond to the corporation, with directions as to its use, or possibly upon condition. To hold that the young men and boys referred to are the beneficiaries in the sense contemplated by our trust statutes and the cases construing the same would be a very strained construction. If the donor had seen fit to make periodical gifts of the proceeds of this bond directly to the corporation, each gift would, under our decisions, unquestionably
96a have been valid. Then why should the gift be invaidated because made through a third party? 'Qui facit per alium facit per se.' Is the beneficiary any the less uncertain where the gift is through a third person? Here we have a gift, or rather a series of gifts, made through a trustee, to a certain corporation, for use in carrying out one of the purposes for which it was incorporated, and we cannot distinguish the case from either Lane v. Eaton, supra, or Atwater v. Russell, supra. In the latter case, indeed, the gift was to trustees for the purpose of sale and payment of the proceeds to a certain corporation, which was to receive the same for a certain use, and the gift was upheld.

"We must not confuse the question of the validity of the trust as creating a perpetuity with that concerning the certainty of the beneficiaries. These questions are entirely separate and distinct; and, having held that the trust is valid so far as concerns perpettuities, we fail to see how any other conclusion with regard to the other question can be reached than as above indicated. In short, since a gift in the terms of this trust would have been valid if it had been made directly to the corporation, and since there is nothing illegal in the power which he has conferred upon the trustees to make the gifts, the trust must be sustained."

This review of the authorities relied on by respondent shows conclusively that they do not hold trusts for charitable purposes to be illegal in Minnesota, but that rather they require certainty as to the beneficiary of such trusts. They further indicate that where a gift is made to a corporation for certain purposes consistent with the corporate charter and organization, though too indefinite to be in themselves the cestui que trust, the gift will if possible be construed as a gift absolute to the corporation, with directions as to its use, or possibly upon condition, rather than in trust. Such a gift may be made of the income of a trust estate. This was the very situation in Young Men's Christian Ass'n of Minneapolis v. Horn, supra. The real cestui of this trust of the corpus was the Young Men's Christian Association, the corporation, rather than the boys and young men to whose education along industrial lines it was required to devote the income which it, as cestui received. It seems to us the situation in this case is exactly parallel to that in the instant case. There the trustee was to collect the income. Here the situation is the same. There it was to be paid to the Young Men's Christian

97a Association, a charitable corporation—here it was to be paid to "the rector, wardens, and vestrymen of St. Marks Church," a religious corporation. There it was to be received and used for providing boys and young men with education along industrial lines—here to be used by said corporation for carrying on the work of the Wells Memorial—a charity.

The language of the present trust instrument is in our opinion much more consonant with a gift on condition of the income of the trust estate to the "Rector, wardens, and vestrymen of St. Marks Church, in Minneapolis, Minnesota, a corporation," as cestui, than it is with a trust on a trust in favor of the Wells Memorial as ultimate cestui. The conduct of the Wells Memorial is presumably within the authorized purposes of the church corporation. At any rate the burden is on respondent to prove it not to be, since it is respondent who is attacking the validity of the gift. The only difference between the instant case and the Young Men's Christian Association case is the fact that it is another corporation, the Minneapolis Foundation, rather than an individual, that is made trustee of the corpus. But this distinction goes only to the competence of the trustee, and not to the validity of the trust of the corpus. Should the Minneapolis Foundation be incompetent to act as trustee, the burden of proving which is likewise on respondent, this fact would nevertheless be rendered immaterial by the salutary rule that a charitable trust will not be allowed to fail for want of a trustee. As said in 26 Ruling Case Law, at page 1191, "In the case of charitable trusts as distinguished from private trusts, the general rule is to the effect that if the object of the trust is lawful and sufficiently specific and definite to enable the court to execute it, it will not be permitted to fail for want of a trustee competent to take, but a court of equity will supply one." See also In re Kavanaugh's Estate, 143 Wis. 90, 126 NW. 672, 677.

The Young Men's Christian Association case, supra, is likewise authority for the proposition that the perpetual trust created by Trust no. 2 is not void as a perpetuity. Neither is the living trust void as an accumulation. Congdon v. Congdon, 160 Minn. 343, 200 NW. 76.

If this court should hold void either the living or the perpetual trust, contrary to what seems the settled law of the State of
98a Minnesota, such holding in a collateral proceeding would not revest in petitioner the trust estate. Neither would it be res adjudicata in a direct proceeding in the States courts joining the trustees and beneficiaries. In short, it is only with the concurrence of the State courts that petitioner could revoke the trusts. And we think that section 219 (g) of the Revenue Acts of 1924 and 1926, dealing with revocable trusts, has reference only to trusts where the grantor expressly reserves to himself alone or in conjunction with someone not a beneficiary of the trust the power of revocation. Certainly such a problematical power of revocation as petitioner has

by starting proceedings in and obtaining the concurrence of the State courts does not make the trust a revocable one within the meaning of Reinecke v. Northern Trust Co., 278 U.S. 339, or Reinecke v. Smith et al. (C.C.A. 7), 61 F. (2d) 324.

Just how respondent can say that trusts 2 and 3 can be revoked at any time is not clear to us. The trust agreement provides that if either the living trust or the perpetual trust therein defined be declared void as a trust, then the trust estate shall revert to petitioner if living—otherwise to his heirs, executors, etc. The trust estate which obviously refers to this particular corpus of the trust held void does not revert until it is declared void. Declared void by whom? Evidently it must be so declared by a competent court. That has never been done and the trust has not been questioned prior to the second stage of this suit. Under present Minnesota statutes it is clearly legal. Mason's Minn. Stats. 1927, sections 8090–8093. The remote possibility that if an action were brought to declare the trust void a court might hold that after Wells' death a part of the trust was invalid is not sufficient to warrant holding that the trust is void. We do not think it is.

Trust No. 3

This trust is similar in part to Trust no. 2. It was created December 30, 1922, and designated as being for the benefit of "Wells Memorial and certain annuitants." By it petitioner, assigned, transferred and conveyed to the Minneapolis Trust Company, as trustee, "Certificate no. 2 for 625 shares, par value $100.00 per share, of the six percent (6%) cumulative, preferred stock, of the Wells Securities Company," and $3,550.00 in cash. The trustee's powers of management and of investment and reinvestment, together
99a with the limitations thereon, were the same as in trusts 1 and 2, above. The income, and as much of the principal as should be necessary, was to be used to pay the net annual premiums upon four policies of life insurance taken out by petitioner on his own life and payable to certain named beneficiaries. The trustee was given full power and authority "to deal with the said insurance policies in any manner that it may deem for the best interests of the beneficiaries, and may borrow money thereon, or may avail itself of any of the conditions, privileges, or benefits provided by the terms and conditions of the said policies of life insurance."

The four insurance policies referred to were all ordinary life policies of the Massachusetts Mutual Life Insurance Company, of Springfield, Massachusetts, issued November 27, 1922, as of October 21, 1922. Policy no. 591931 was in favor of Annie M. Peavey, relative of petitioner, and provided death benefits in the form of an annuity of $50.00 a month for the life of said beneficiary. The policy provided that—

"If the said beneficiary lives to receive more than 240 monthly payments, there will be paid at the death of said beneficiary to the

executors or administrators of said beneficiary, the commuted value of so many monthly payments, if any, as are necessary to make the total number of monthly payments a multiple of twelve. Payment to the above-named beneficiary is subject to the insured's right, if any, to change the beneficiary hereunder; in the event of such change, only 240 monthly payments (hereinafter called 'the stipulated payments') will be made."

It also provided that—

"If the death of the beneficiary occurs after the death of the insured, and before all the stipulated payments have been made, the commuted value of the remainder of such payments will be paid in one sum to the executors or administrators of said beneficiary, unless otherwise provided by the insured,"

and that,

"If no beneficiary survives the insured, nine thousand and seventy dollars, the sum insured, as described above, will be paid in one sum to the executors or administrators of said insured."

100a It also reserved to the insured the power to change the beneficiary and provided that "None of the payments hereunder shall be commuted, transferred, or encumbered by any beneficiary, except upon the written authority of the insured filed with the company during his lifetime." The usual rights, powers, and life benefits with respect to dividends, loans, nonforfeiture, and so forth, were provided for, and belonged originally to the insured. No provision was made for optional settlement at maturity.

A series of indorsements appear upon the policy. The first of these provides for contingent beneficiaries of death benefits, as follows:

"Springfield, Mass., November 27, 1922. It is hereby provided that in the event of the death of the said Annie M. Peavy, before receiving any or all of the first 240 stipulated monthly instalments as herein provided, so many of said 240 stipulated installments as then remain unpaid shall be paid as they become due to Mecca Peavey—relative of the insured—if living, otherwise to Helen R. Golding—valued employee of the insured, if living, otherwise to the trustees of the Minneapolis Foundation of Minneapolis, Minnesota, without obligation on the part of the Insurance Company to see to the carrying out of the terms of the trust.

WHEELER H. HALL, *Secretary.*"

By similar indorsement on March 22, 1923, signed by "Albert D. Shaw, Asst. Sec'y.," it was stated that "The right to make future changes of any beneficiary herein without the consent of the beneficiary or beneficiaries herein, has been specifically surrendered and canceled." Later indorsements acknowledged notification of the death of Annie M. Peavey, first-named beneficiary, with a consequent slight reduction of the premium, and notification of the fact that Helen R. Golding, third-named beneficiary, had become the wife of the insured.

Policy no. 591932 was substantially identical with policy no. 591931, above, except that Mecca Peavey, instead of Annie M. Peavey, was the first named beneficiary. An indorsement of November 27, 1922, made Annie M. Peavey, Helen R. Golding, and the trustees of the Minneapolis Foundation contingent beneficiaries in the order named. An indorsement of March 22, 1923, stated
101a that the right of the insured to make future changes of any beneficiary without the consent of the beneficiary or beneficiaries had been specifically surrendered and canceled; and a still later indorsement acknowledged notification of the changed status of Helen R. Golding.

Policy no. 591933 was substantially identical with policies 591931 and 591932, above, except that Helen R. Golding was the first-named beneficiary, and the monthly annuity payable on the death of the insured was $250.00. An indorsement of November 27, 1922, made the trustees of the Minneapolis Foundation the only contingent beneficiary, and later indorsements of March 22, 1923, and August 13, 1926, acknowledged cancellation of the power to change any beneficiary and notification of the changed status of Helen R. Golding.

Policy no. 591934 was substantially identical with the three policies described above, except that George B. Charnley was the beneficiary, and the monthly annuity payable on the death of the insured was $75.00. An indorsement of November 27, 1922, made Helen R. Golding and the trustees of the Minneapolis Foundation contingent beneficiaries in the order named, and later indorsements were similar to the indorsements shown to have been entered on the other three policies.

All the policies contained provisions identical except as to amount with the provisions quoted above in connection with policy no. 591931 for lump-sum settlement to the executors or administrators of the insured in the event of all the beneficiaries dying before exhaustion of the payments due.

By the terms of the trust, all income in excess of that necessary to pay the net annual premiums on the above policies of insurance was to be accumulated "to pay life insurance premiums in years when the trust estate shall not produce sufficient income." Petitioner further provided that—

"In the event that during my life the premiums on all of the four policies named in paragraph numbered three (3) shall cease to be demanded or paid, by reason of the fact that all of the beneficiaries named under the four policies shall predecease me, or by reason of some act of the trustee under the discretionary powers granted in paragraph two (2), then, and in that event, the trustees shall forth-
with deliver over to the Minneapolis Foundation, a corporation
102a organized under the laws of Minnesota solely for benevolent and charitable purposes, with principal place of business in the city of Minneapolis, in said State, the entire trust estate then in

its possession, which delivery shall be made in like manner as herein provided to be made upon my death.

"Upon my death, or upon the happening of any contingency named in paragraphs two (2) or six (6), which defeat the purpose of the trust, the entire trust estate with the accumulations, if any, shall be delivered over to the said Minneapolis Foundation, to be by the said Minneapolis Foundation used in accordance with the terms of the following trust.

"I presently give, grant, and convey in perpetuity unto the said Minneapolis Foundation, the trust estate heretofore created, and its accumulations, if any, existing and remaining in the possession of the said Minneapolis Trust Company at the date of my death, or at the time of death, or at the time of the occurrence of the other conditions herein named, not for its own use and benefit, however, but upon the trust hereinafter defined."

Further provisions, applicable to both the living and the perpetual trusts thus created, were identical with those set forth under Trust No. 2, above. The income of the perpetual trust was payable on exactly the same conditions to the "Rector, wardens, and vestrymen of St. Marks Church, in Minneapolis, Minnesota, a corporation."

It is to be noted that no express provision is made empowering the trustee to collect and pay over the proceeds of the policies of insurance on the death of the insured. The policies remained payable, as annuities, to the beneficiaries who should survive the insured; and only in the event of all the named beneficiaries of each particular policy dying before the 240 stipulated monthly payments had been exhausted would any part of the proceeds of that policy go by way of lump-sum settlement to the insureds' estate. But this contingency would seem in the nature of things not likely to occur, but since as to each policy the last-named contingent beneficiary is the Minneapolis Foundation, a corporation, whose decease can only be brought about by its voluntary or involuntary dissolution, an hypothesis not to be presumed.

103a We refer to some statements of respondent's supplemental brief. It is there said, "Under Trust No. 3 no express provision is made in the trust instrument for the disposition of benefits payable under the policies in case the beneficiaries predeceased Wells 'or if for any other reason payments on said policies shall cease to be demanded or paid.'" The instrument creating Trust No. 3 provides: "Upon my death, or upon the happening of any contingency named in paragraphs two (2) or six (6), which defeat the purpose of the trust, the entire trust estate with the accumulations, if any, shall be delivered over to the said Minneapolis Foundation, to be by the said Minneapolis Foundation used in accordance with the terms of the following trust," which shows that explicit provision is made for the disposition of benefits if the beneficiaries predecease Wells. This statement occurs, "The four policies themselves (Ex. pp. 32–44) provided that upon the

death of Wells * * * and if no beneficiary survived the insured a fixed amount was to be paid in one sum to Wells' estate." This overlooks the indorsement on the first page of each policy of provisos naming contingent beneficiaries and naming as the last contingent beneficiary the Minneapolis Foundation, a corporation.

At pages 26–27 of its supplemental brief respondent argues as follows:

"But the foundation is entitled only to receive the balance of the 240 payments not theretofore paid to the first or other preceding beneficiary. It does not appear that naming the foundation as beneficiary does away with the requirement of each policy that if no beneficiary survives the insured the commuted value of 240 payments shall be paid to the estate of Wells. In other words, the foundation is only to receive what one of the living beneficiaries would have received during the rest of her life had she continued to live. One beneficiary, Annie Peavey, has already predeceased Wells (Ex. 34) and it does not appear that the others (who were aged 38, 58, and 62 when the policies were taken out (Ex. 36, 39, 42) have not also predeceased him. Thus Wells' estate may already have become or may later become the beneficiary of the policies under Trust No. 3."

We do not see how this follows. The lump-sum settlement that is to be made to the estate of Wells in the event of the beneficiaries named not exhausting the stipulated 240 payments is not an
104a amount over and above the amount of the 240 payments; rather it is to be the commuted value of the balance of said payments left unpaid. And so long as the Minneapolis Foundation may receive this balance as a beneficiary the provision for lump-sum settlement, though of course not done away with, is nevertheless rendered inapplicable. It therefore follows that the estate of Wells will not become the beneficiary of the policies so long as the Minneapolis Foundation endures.

All further considerations applicable to Trust No. 3 have been dealt with under Trust No. 2, above, and its income, like the income of Trust No. 2, is no more income to the petitioner than the income of Trust No. 1.

Trust No. 5

The instrument creating this trust designated it as being for the benefit of Thomas Bucklin Wells, Frank Hutchison Peavey Wells, Frederick Brown Wells, Jr., and Mary Wright Peavey Wells, children of petitioner, and was executed August 6, 1923. By it petitioner assigned, transferred, and conveyed to the Minneapolis Trust Company, as trustee, "Certificate No. 16 for 1,000 shares of the six per cent cumulative preferred stock of the Wells Securities Company, a Delaware corporation, said stock being of the par value of $100.00 per share." The trustees' powers of management and of investment and reinvestment, together with the limitations thereon,

were the same as in trusts 1, 2, and 3. The income, and as much of the principal as should be necessary, was to be used to pay the net annual premiums upon policies of life and accident insurance taken out by petitioner, the trustee "having been irrevocably designated as the beneficiary of the llife-insurance policies, and as beneficiary of the death benefit recoverable under the accident-insurance policies." The trustee was given full power and authority "to deal with said insurance companies and with the said insurance, in any manner that it may deem for the best interests of the beneficiaries, and may borrow money thereon, or may avail itself of any of the conditions, privileges or benefits provided by the terms of the said policies of life insurance."

Ten policies of life and three of accident insurance are involved in this trust. It seems unnecessary to particularize as to
105a these different policies. It would extend this opinion to indefensible lengths. Some were payable to Mary D. Wells upon petitioner's death, if living, and otherwise to her executors, administrators, or assigns. One was payable to petitioner's mother, but the beneficiary therein was changed to the insured's estate and to Mary D. Wells. The plans of some of these policies were changed, but the sum total of the matter is that all of them had been irrevocably assigned to the trustee at the time of the execution of the trust instrument of August 6, 1923, except one, and the statement in that instrument that all had been assigned was an error as to policy no. 679B. Ex. of the State Mutual Life Assurance Company. At that time Mary D. Wells had made no assignment as to that policy and petitioner had no interest to assign. However, on February 14, 1924, Mary D. Wells released the assignment to her and the interest then reverted to petitioner, and redounded immediately by virtue of the provisions of the trust instrument, and in accordance with well-known rules of law, to the Minneapolis Trust Company. Any defect in the title or interest which the Minneapolis Trust Company secured was cured by the assignment to it of all possible interest in the policy made the same day in which Mary D. Wells joined. Therefore this misstatement in the trust instrument is immaterial. The death benefits of said policies, originally payable to Mary D. Wells, if living, otherwise to petitioner's estate, were made payable to the Minneapolis Trust Company, as trustee. It does not appear whether such change in the beneficiary of death benefits was made irrevocable. Unless assigned by the terms of the trust instrument, disability benefits remained payable to petitioner.

The only considerations raised by respondent under Trust No. 4 that have not already been dealt with under Trusts 1, 2, or 3 are the effect of the limitation over to the children's heirs in accordance with the Minnesota statute of distributions, and the effect of the inclusion in the trust of the policies of accident insurance whose disability benefits evidently have remained payable to petitioner. As to the first consideration respondent argues that under the Minnesota statute a father may inherit from his children, and thus it follows

that petitioner "may ultimately receive the entire corpus of this trust, both the original corpus and the proceeds of the policies."

106a Now, obviously, petitioner will never inherit the proceeds payable at death on policies of insurance on his own life. And we have already considered, under Trust No. 1, the possibility that exists regardless of an express provision to that effect, viz, that in the event of petitioner's children all predeceasing him the trust estate may revert to him either as grantor, for want of cestui, or as heir of his children. We there held such a possibility not to constitute property in a present taxable sense, citing Coolidge v. Long and Reinecke v. Northern Trust Co., both supra, and not to constitute a present benefit in the sense of income. The same result follows here.

We regard the policies of accident insurance as "policies of insurance on the life of the grantor" within the meaning of section 219 (h) of the Revenue Acts of 1924 and 1926. They are certainly "policies of insurance" and are "on the life of the grantor" as much as any other kind of insurance policy carrying death benefits. They are simply of narrower scope as regards the cause of death. Premiums paid thereon do not constitute money saved, as in the case of life insurance, nor give the policy a cash surrender value, yet are presumably paid for their equivalent of protection in case of death or disability.

In the instant case it does not appear except from the recitation in the trust instrument that the death benefits of the above policies of accident insurance were irrevocably made payable to the Minneapolis Trust Company. Nor can we say from the terms of the trust instrument, and it does not otherwise appear, that the disability benefits were in any way assigned so as to cease to be payable to petitioner himself. It, therefore, follows that petitioner has conveyed away property on the understanding that a part of the income therefrom is to be used to keep in force contracts by which in the event of his disability he will receive definite payments thereunder. For the tax years here in question a part of the income was so used. It follows that petitioner was enriched during those years in a definite pecuniary sense to the extent at least of the value of the disability contracts. This being so, the instant case is assimilable as regards the premiums paid on the policies of accident insurance to the cases in the Board of Tax Appeals of Danforth v. Commissioner of Internal Revenue, 18 B.T.A. 1221, and Adams v. Commissioner

107a of Internal Revenue, 18 B.T.A. 381, and fall within the proper scope of Old Colony Trust Company v. Commissioner of Internal Revenue, 279 U.S. 716; United States v. Boston and Maine R. Co., 279 U.S. 732, and United States v. Mahoning Coal R.R. Co., 51 F. (2d) 208. Such premiums may, therefore, be constitutionally taxed to the grantor under section 219 (h) of the Revenue Acts of 1924 and 1926; and if Congress did not intend to include them within the scope of that section, they may nevertheless be taxed to petitioner in the instant case as the real beneficiary of the trust for their payment, under section 219 (b) of the same acts.

Trust no. 5

Trust No. 5 will be found to be no different on its facts from Trust No. 4, and therefore assimilable to the same rules. It is for the benefit of the same children of petitioner. By it petitioner assigned, transferred, and conveyed to the Minneapolis Trust Company, as trustee, "Certificate no. 17 for 100 shares of the six percent cumulative preferred stock of the Wells Securities Company a Delaware corporation, said stock being of the par value of $100.00 per share." The trustee's powers of management and of investment and reinvestment, together with the limitations thereon, were the same as in trusts 1, 2, 3, and 4, above. The income of the trust estate, and so much of the principal as should be necessary, was to be used to pay the net annual premiums upon nine policies of life insurance, and three policies of accident insurance, taken out by petitioner, the trustee having the same powers as in Trust No. 4.

January 29, 1921, by separate assignments, under seal and acknowledged and duly approved, petitioner assigned all his right, title, and interest to these policies to Mary D. Wells; and Mary D. Wells by assignments of May 1, 1923, assigned the same to the Minneapolis Trust Company. In June, 1923, petitioner acknowledged separately as to each assignment thus made to the Minneapolis Trust Company by Mary D. Wells, "that I have previously assigned to Mary Drew Wells all my right, title, and interest in and to said policy, that I have no right to object to the above assignment nor wish to do so."

As to all the policies the assignments were complete as regards petitioner. He retained no interest in nor control over them. This statement may be made without specifically pointing out the
108a various steps in the assignments of the policies and the changes and releases of beneficiaries.

A similar question arises here as in Trust No. 4 as to the accident policies, which were substantially identical with the policies there included.

As of August 10, 1927, the trustee relinquished accident policy no. DWB 5168 of the Connecticut General Life Insurance Company, and substituted a policy of the Standard Accident Insurance Company of Detroit, Michigan. The application therefor directed that death benefits be made payable to the Minneapolis Trust Company, as trustee. In all three accident policies disability benefits presumably remained payable to petitioner himself.

Under the terms of the trust instrument, any income in excess of the amount necessary to pay the net annual premiums on the above policies of life and accident insurance was to be accumulated until sufficient to pay two successive net annual premiums upon all of said policies, "any accumulations in excess of which amount shall be distributed between my children, herein named as beneficiaries, in the proportion in which they shall ultimately receive the incomes from the trust estate, and in the event that any accumulation pro-

vided for herein shall be held invalid for any reason, such accumulation shall be distributed in the same manner." As in the instrument creating Trusts No. 1 and No. 4, petitioner provided that upon his death the trustee should use the insurance money to buy securities from his estate at the appraised valuation. The same provisions for disposition and termination that were provided for in Trust No. 4 are also found here.

It thus appears that as regards both the life insurance and the accident insurance policies and the terms of the trusts, Trust No. 5 is in no way distinguishable from Trust No. 4. Except as regards the accident policies both are assimilable to the situations already found present as to trusts 1, 2, and 3, and the law found to be applicable thereto. All of these trusts irrevocable in their nature were created prior to the enactment of section 219 (h), supra. That act was intended to be retroactive and to reach irrevocable as well as revocable trusts. In applying it to the situation here presented it taxes as
109a income of petitioner something that is not his income and that in no way enriches him except as to the premiums paid on the accident insurance policies in trusts 4 and 5.

The decision of the Board of Tax Appeals is in our judgment incorrect as to trusts 1, 2, and 3, and correct as to trusts 4 and 5 only as to the amounts used to pay premiums on the policies of accident insurance included in these trusts. As to trusts 1, 2, and 3 the order of the Board of Tax Appeals is reversed. As to trusts 4 and 5 it is modified as herein indicated, and the cause is remanded for further proceedings not inconsistent with this opinion.

110a In United States Circuit Court of Appeals Eighth Circuit

No. 9191

FREDERICK B. WELLS, PETITIONER

vs.

COMMISSIONER OF INTERNAL REVENUE

February 7, 1933

Decree

On petition to review decision of United States Board of Tax Appeals.

This cause came on to be heard on the petition to review the decision of the United States Board of Tax Appeals, and was argued by counsel.

On consideration whereof, it is now here ordered, adjudged, and decreed, by this court, that the order of redetermination of the said Board of Tax Appeals in this cause, as to trusts numbered one, two, and three, be, and the same is hereby, reversed, and as to trusts numbered four and five, the same is hereby modified as indicated in

the opinion of this court filed herein on February 4, 1933, without the taxation of costs in favor of either of the parties in this court.

It is further ordered that this cause be, and the same is hereby, remanded to the said Board of Tax Appeals for proceedings not inconsistent with the opinion of this court.

111a In United States Circuit Court of Appeals

Præcipe for transcript

Filed March 17, 1933

To the Clerk of the United States Circuit Court of Appeals for the Eighth Circuit, St. Louis, Missouri:

SIR: You will please include in the transcript of the record for filing in the Supreme Court in the above-entitled cause the following papers, proceedings, and documents:

1. The record as printed in the first instance and the volume of exhibits subsequently printed.
2. Order of resubmission.
3. Opinion.
4. Decree.
5. This præcipe.
6. Your certificate.

THOMAS D. THATCHER,
Solicitor General.

Due service and receipt of a copy of this præcipe is acknowledged this 16th day of March 1933.

JAMES S. Y. IVINS,
Attorney for Frederick B. Wells.

[File endorsement omitted.]

112a [Clerk's certificate to foregoing transcript omitted in printing.]

1 In United States Circuit Court of Appeals, Eighth Circuit

May term, 1932

No. 9191

FREDERICK B. WELLS, PETITIONER

vs.

COMMISSIONER OF INTERNAL REVENUE

Order setting aside former submission of case and as to filing additional briefs and exhibits

This cause has heretofore been submitted to the court on the transcript of the record from the United States Board of Tax Appeals as

printed and on the briefs of counsel now on file and was argued orally. Counsel for respondent have filed a motion to set this cause for further argument with leave to file additional briefs and counsel for petitioner have filed a memorandum in opposition. The court is of the opinion that leave to file further briefs should be granted and the said motion of respondent is therefore hereby granted; the submission of this cause is hereby vacated and set aside and this cause is hereby ordered to be assigned for a full hearing and submission at the November term, 1932, of this court, with leave to file supplemental briefs, not to supersede those on file but to be supplemental thereto; the respondent, to file his supplemental brief, if any, on or before October 1, 1932, and the petitioner to file additional brief, if any, in answer to such supplemental brief on or before November 10, 1932.

It appears from the letter of counsel for petitioner addressed to the clerk of this court under date of June 16, 1932, that the present record does not contain the photostatic copies of the insurance policies and the trust agreements, and it is therefore hereby ordered by this court that the petitioner cause to be filed with the clerk of this court such photostatic copies from the Board of Tax
2 Appeals records and to have copies thereof added to the printed copies of the record in this court under the supervision of the clerk.

AUGUST 8, 1932.

In United States Circuit Court of Appeals for the Eighth Circuit

[Title omitted.]

Stipulation as to printing of exhibits

Filed October 7, 1932.

The Board of Tax Appeals having certified to this court, pursuant to the order of this court entered August 8, 1932, the original exhibits filed with the Board in this proceeding; and it appearing that parts of said exhibits are irrelevant to any issue which will be presented on the reargument before this court; the parties have agreed that certain parts of said exhibits may be omitted by the clerk in printing the record. It is accordingly stipulated that the clerk need print only those parts of said exhibits (and explanations of omitted parts) as are set forth in the subjoined transcript.

J. S. Y. IVINS,
Counsel for Petitioner.
HELEN R. CARLOSS,
Counsel for Respondent.

OCTOBER 3, 1932.

Petitioner's exhibit #1

Frederick B. Wells Trust for the benefit of Mary Wright Peavy Wells

I, Frederick B. Wells, a resident of the city of Minneapolis, in the State of Minnesota, in consideration of the sum of one dollar ($1.00), hereby assign, transfer, and convey unto the Minne-
3 apolis Trust Company, trustee, the following described property, which has been this day delivered to the said trustee:

Certificate no. 8 for 1,000 shares of the six per cent cumulative preferred stock of the Wells Securities Company, a Delaware corporation, said stock being of the par value of $100.00 per share; not for its own use and benefit, however, but upon the trusts hereinafter defined:

1. My trustee shall take possession of, manage and control the trust estate, and demand, receive and collect the income and dividends therefrom, and invest and reinvest the trust estate, and may retain the corporate stock herein conveyed as long as it deems best, or may sell and convey the same, at such prices, in such parcels, and upon such terms as it may deem best. I request, but do not define as a condition, that the trustee retain the capital stock hereby conveyed, in trust, until the termination of the trusts herein defined, but should the trustee in the exercise of its powers and of its discretion elect to sell the said corporate stock, the proceeds derived from such sale shall be invested and reinvested only in such securities as are now authorized by the laws of the State of Minnesota for the investment of funds by trust companies; and further, in the event of the sale by the trustee of the said corporate stock, I request, but do not define as a condition, that the trustee, first offer the said sock for sale to the Wells Securities Company.

2. The income of the trust estate, and so much of the trust estate as may be necessary, shall be paid to the Connecticut Mutual Life Insurance Company, of Hartford, Conn., upon its demand, to pay the net annual premium upon a certain policy of life insurance, written by the said Life Insurance Company upon my life, the said policy being described as policy no. 472778, dated December 22nd, 1922, amount of insurance one hundred thousand dollars ($100,000.00), beneficiary Minneapolis Trust Company, trustee. The net premium to be paid is the sum which remains after deducting from the premium named in the policy, the dividend or earnings upon such policy for each year. The trustee is given full power and authority, however, to deal with the said Insurance Company and with the said insurance in any manner that it may deem for the best interests of such Minneapolis Trust Company, as trustee, and may
4 borrow money thereon, or may avail itself of any of the conditions, privileges, or benefits provided by the terms of the said policy of life insurance.

3. The income from the trust estate, in excess of the sum necessary to pay the first and the successive net annual premiums upon the said policy of life insurance hereinbefore described, shall, for the first and for as many successive years as may be necessary, be retained and held by the trustee until an amount has accumulated sufficient to pay one additional net annual premium upon the said life insurance policy. The annual income of the trust estate in excess of the current net annual insurance premium and the one additional net annual insurance premium herein provided for, shall, in the discretion of the trustee, be paid over to my daughter, Mary Wright Peavey Wells, at the end of each year.

4. Upon my death, the trustee shall collect the principal sum named in the said policy of life insurance, and shall with the proceeds thereof, purchase from the executor of my estate, securities belonging to the said estate, amounting to the sum of one hundred thousand dollars ($100,000.00), at the appraised value of such securities, and such securities shall thereupon become and be a part of the trust estate hereby created. My trustee shall take possession of, manage, and control the securities so purchased from my executor, and shall demand, receive, and collect the income and dividends therefrom, and invest and reinvest the trust estate, and may retain the same as long as it deems best, or may sell and convey the said securities at such prices, in such parcels, and upon such terms as it may deem best, but in the event that it sells the said securities, the proceeds of such sale or sales shall be reinvested only in such securities as are now provided by the laws of Minnesota for the lawful investment of the funds of trust companies.

5. After my death the income from the trust estate shall be paid over to my daughter, Mary Wright Peavey Wells, quarterly, upon February 15th, May 15th, August 15th, and November 15th, of each year, during her lifetime.

6. Upon the death of my daughter, Mary Wright Peavey Wells, this trust shall cease and determine, and my trustee shall pay over and deliver the trust estate to the person or persons to whom she shall, by will, designate to receive it; such power of disposition by will being hereby expressly granted to my daughter Mary Wright Peavy Wells. But if my daughter shall not by will dispose of the said trust estate, the same shall, upon her death, be delivered over, in equal parts, to her issue living at the time of her death, and to the issue of a deceased child by right of representation. If my daughter dies leaving no living issue and without having disposed of the said trust estate by will, then the trust estate shall be paid over and distributed in equal parts to my sons, Thomas Bucklin Wells, born August 26th, 1902; Frank Hutchinson Peavey Wells, born September 29th, 1905; and Frederick Brown Wells, Jr., born November 6, 1906, or the survivors or survivor of them, upon the date when the youngest of my said sons or the youngest of the survivors attains the age of twenty five years.

In testimony whereof, I have hereunto set my hand this 30th day of December 1922 at Minneapolis, Minnesota.

FREDERICK B. WELLS.

In the presence of:
BLANCHE LOVE.
C. F. DEAVER.
(Acknowledgment by Frederick B. Wells.)
(Acceptance by trustee.)

No. 472778

Rated age 50

Death benefit. Beneficiary. The insured.

The Connecticut Mutual Life Insurance Company, of Hartford, Connecticut, hereby agrees to pay the sum of one hundred thousand dollars (the face amount of this policy) to Minneapolis Trust Company, trustee, its successors or assigns (subject to the provisions hereinafter contained as to change in the mode of settlement) upon receipt at the home office of the company in Hartford, Connecticut, of due proof of the death of Frederick B. Wells, of Minneapolis, State of Minnesota, herein called the insured.

6

Annual premium.

This contract is made in consideration of the payment to the company of the annual premium of forty-five hundred forty-five and 00/100 dollars on the twenty-third day of December 1922 and of a like annual premium on or before the anniversary of the same date in every year during the continuance of this policy.

Policy settlement. Any and every sum due under this policy shall be payable only at the home office of the company in Hartford, Connecticut, and in any settlement hereof there shall be deducted any indebtedness to the company on or secured by this policy.

The provisions, benefits, agreements, and tables on the following pages are hereby made a part of this policy.

In witness whereof, the Connecticut Mutual Life Insurance Company has caused this policy to be signed by its president and secretary and countersigned by its registrar in the city of Hartford, State of Connecticut, this thirtieth day of December, A. D., one thousand nine hundred and twenty-two.

HENRY S. ROBINSON, *President.*
JACOB H. GREEN, *Secretary.*

Countersigned:
CLIFFORD R. HASKINS, *Registrar.*

Term of life ann'l premiums annual dividends (form A374).

Annual participation in surplus and application of dividends

The dividend. This policy, upon payment of the second annual premium and during its continuance thereafter as a premium-paying, paid-up or extended insurance policy, will participate annually in the divisible surplus which shall be determined and apportioned by the company.

The dividend shall be payable to Minneapolis Trust Company, trustee, its successors or assigns and, at the option of the payee thereof, shall be—

(1) Paid in cash; or

(2) Left with the company, subject to withdrawal, to accumulate at such rate of interest, credited annually at not less than 3%, as the company may determine; or

7 (3) Applied on a premium due hereon; or

(4) Converted into a participating paid-up addition to sum insured hereunder. Any such additions outstanding may at any time be surrendered to the company by the payee of the cash value of this policy for an amount equal to the then reserve thereon.

If the company be not otherwise directed in writing by said payee of the dividend prior to the expiration of thirty-one days after such dividend becomes payable, the dividend shall be treated as above provided under option (2).

Any dividends due and unpaid and any paid-up additions outstanding at the maturity of this policy shall be payable with the sum herein insured to the payee of such insurance.

Applications of dividends to make policy (1) fully paid-up, or (2) mature as an endowment at an earlier date. Whenever the reserve on this policy and on any paid-up additions hereto, with any accumulated dividends credited, (1) shall equal the net single premium for a fully paid-up policy of this same kind and face amount for the then age of the insured at nearest birthday, upon release of such dividends and paid-up additions, the company will endorse this policy as fully paid-up, or (2) shall equal the face amount of this policy, then upon surrender hereof and release of such dividends and paid-up additions the company will pay to the payee of the cash value of this policy the face amount of this policy as a matured endowment, less any indebtedness to the company on or secured by this policy.

Automatic payment of premium by accumulated dividends. If any premium or installment of premium be not paid as herein provided, and if there be at the expiration of the time herein provided for such payment accumulated cash dividends credited on account of this policy at least equal to the payment required, then said payment shall be made by the application of an equal amount of such credit, or if such credit be less than the required payment then out of such credit, if sufficient, shall be paid as semiannual or quarterly installment of the annual premium.

Nonforfeiture benefits

Optional paid-up or extended insurance. If, after due payment of two or more full annual premiums hereon, a premium or installment of premium be not paid as herein provided, the company will grant either—

8 (1) Participating paid-up insurance, payable as herein provided, for the remainder of the term of this policy in the amount which the then cash value of this policy and of any outstanding paid-up additions hereto less any existing indebtedness to the company on or secured by this policy, will purchase as a net single premium; or

Paid-up insurance.

Extended insurance.

(2) Participating extended insurance, payable as herein provided, for the face amount of this policy, increased by the amount of any outstanding paid-up additions hereto and decreased by the amount of any existing indebtedness to the company on or secured by this policy, for such term, reckoned from the due date of such unpaid premium or installment of premium, as the then cash value of this policy and of any outstanding paid-up additions, less such indebtedness, will purchase as a net single premium.

Automatic insurance.

Upon premium default as above, this policy shall be automatically binding upon the company for extended insurance as above defined; except that at any time prior to the expiration of thirty-one days following the days of grace herein provided, upon written application by the payee of the cash value of this policy filed at the home office of the company on its form therefor accompanied by the policy for suitable endorsement, this policy will be made binding upon the company for the alternative insurance above provided in lieu of the insurance herein automatically provided.

Cash value on surrender. At any time after due payment of two or more full annual premiums hereon, and on surrender of this policy by Minneapolis Trust Company, trustee, its successors or assigns, the company will pay the cash value of this policy in full settlement of the liability of the company hereunder; provided that the company may defer such surrender and payment for a period not exceeding sixty days after application therefor.

Such cash value shall be as follows:

(1) If there shall have been no failure to pay premiums as provided in this policy, the cash value on the due date
9 of an annual premium shall be the then reserve hereon, less a charge per $1,000 face amount of this policy, which if not more than five full annual premiums are paid is $10 and thereafter is reduced by $1 for each full annual premium paid after the fifth

and until fifteen are paid, when the charge is eliminated; a proportionate adjustment to be made on account of the payment of any additional installment of an annual premium in excess of full annual premiums; and the cash value at other than premium due dates to be the cash value at the end of the term for which premiums are paid discounted at the rate of 5% per annum, but in no event less than any previous cash value;

(2) If this policy be a policy of paid-up or extended insurance the cash value shall be the then reserve hereon; provided, however, that in any case such cash value shall be increased by the cash value of any outstanding paid-up additions and decreased by any existing indebtedness to the company on or secured by this policy.

Policy loan. At any time after due payment of two or more full annual premiums hereon, while this policy is in force otherwise than as extended insurance, on proper assignment and delivery of this policy and on the sole security thereof, the company will loan any sum up to the limit secured by the cash value of this policy and of any paid-up additions hereto less any existing indebtedness on or secured by this policy; provided that (unless the loan be for the purpose of paying premiums to the company) the company may defer the making of such loan for a period not exceeding sixty days after application therefor. Such loan shall bear interest at the rate of 6% per annum, payable annually, not in advance, on the due date of the annual premium principal and interest to be payable at the home office of the company. The company will credit upon such indebtedness payments made at any time.

Any interest when due and unpaid shall be added to the principal of the existing indebtedness and shall bear the same rate of interest; but failure to pay either principal or interest shall not avoid this policy until the total indebtedness to the company secured hereby, including accrued interest, shall equal or exceed the then cash value, when this policy shall immediately cease and become void, but not until thirty-one days after notice shall have been mailed by the company to the last known address of the insured and of any assignee of record at the home office of the company.

Premium loan. If written application by the payee of the cash value of this policy be filed at the home office of the company upon its form therefor while this policy is a premium-paying policy, and if such application remains unrevoked, the amount of any premium or instalment of premium not otherwise paid as herein provided will be charged as an indebtedness against and secured by this policy, provided the entire indebtedness hereon including such charge shall not exceed the limit secured by the cash value hereof; such indebtedness to bear interest from the due date of such premium or instalment of premium, and to be subject to the terms herein provided for policy loans, but without assignment or delivery of this policy, and any premium or instalment of premium so charged will be treated as paid.

Table of values

(Table omitted as immaterial. Contains a tabulation showing cash and loan value, value in paid-up insurance, and value in extended insurance, per each $1,000 face amount of the policy, for each year from the 2d to the 21st elapsed since the due date of the first annual premium.)

Other benefits and provisions

Premium payments. All premiums hereon shall be payable in advance either at the home office of the company or to an agent of the company upon delivery of a receipt signed by its president or secretary and countersigned by the agent; and the possession of such receipt shall be the sole evidence of the authority of any agent to receive any premium on account of this policy. If any premium or installment of premium on this policy be not paid as herein provided, then all liability on account of this policy shall wholly cease and determine except as otherwise herein provided.

Instalments. The annual premium, with an addition of 2% thereof if paid in semiannual instalments or 3% thereof if paid in quarterly instalments, may, on written request, be paid in such instalments.

Grace. After payment of the first annual premium hereon or an instalment thereof, payment of any subsequent premium or instalment of premium may be made within thirty-one days after the same shall have become due, the policy meanwhile continuing in force.

11 From the amount due under this policy at the death of the insured, if this policy be then a premium-paying policy, there shall be deducted any unpaid premium or instalments of premium for the then current policy year.

Reinstatement. At any time after default in premium payment this policy and any paid-up additions hereto existing at the date of such default will be restored to full force upon receipt of evidence of insurability satisfactory to the company and payment of arrears of premiums and of any cash value paid, with interest at the rate to be determined by the company not exceeding 6% per annum; but if this policy be reinstated any indebtedness of the company on or secured hereby existing as of the date of such default will be reinstated with the interest thereon from such date.

Incontestability. Except for nonpayment of premium, this policy will become incontestable one year after its date of issue, if the insured be then living, otherwise two years after its date of issue; but if the age of the insured has been misstated any sum payable hereunder shall be such as the premium paid would have purchased at the correct age. The age of the insured will be admitted by the company at any time upon satisfactory proof.

Change of plan. This policy, while premium-paying, may be exchanged on any due date of an annual premium hereon, or within thirty-one days thereafter, without medical examination, for a premium-paying policy upon any other form and published premium rate in use by the company at the issue of this policy (except that any form providing a double indemnity or disability benefit shall be available only with the company's consent) upon written request by the insured with the beneficiary, and payment of the difference in reserves and in then current dividends, provided the term of the insurance be not thereby increased or the premium rate diminished. The policy issued in exchange shall bear the same number, be for the same amount, be written as of the same premium due date and rated age as this policy, and be subject to any indebtedness and assignments then outstanding against this policy.

Assignments. Originals or duplicates of all assignments are to be filed at the home office of the company. The company will not be responsible for the validity of any assignment.

Reserves and net single premiums. The reserves and net single premiums mentioned herein are based upon the American
12 Experience Table of Mortality and 3% compound interest. Such reserves are computed by the full level premium method.

Suicide. In the event of the death of the insured within one year from the date hereof by self-destruction, while sane or insane, unless it be determined by the company that the insured was so far insane as to destroy his responsibility therefor, the face amount of this policy shall be reduced to, and the company shall be liable only for, a sum equal to the premiums paid hereon.

Evidence of contract. This policy and the application therefor, a copy whereof is hereunto annexed, shall constitute the entire contract between the parties and all statements made by the insured shall, in the absence of fraud, be deemed representations and not warranties, and no such statement shall be used to avoid this policy or in deference to a claim hereunder unless contained in said application and a copy of the application shall be attached to the policy when issued. Agents of the company have no power or authority to alter or modify any of the terms, conditions, or agreements of this policy, or to waive any of the provisions hereof.

Optional settlements at maturity

Options in lieu of payment of proceeds in a single sum. Upon application by the insured with the beneficiary, if no interest herein under any assignment other than to the company be then outstanding, or upon application by the payee at the maturity of this policy, the company will agree, subject to the provisions hereof, in lieu of the payment of the proceeds at maturity as hereinbefore provided, to pay to the payee named in such application:

Instalments.

Option 1. A specified number of equal annual instalments certain, the first instalment to be payable immediately upon maturity of the policy, each instalment to be of the amount for each $1,000 of the policy proceeds as shown in the Table of Instalments hereon opposite the number selected, and such instalments after the first to be increased by such surplus interest earnings as shall from time to time be determined and thereto apportioned by the company;

Option 2. Equal annual instalments, continuous during the life of the individual payee named in such application and in any event until the number selected
13 of annual instalments certain shall have been paid, the first instalment to be payable immediately upon maturity of the policy, each instalment to be of the amount for each $1,000 of the policy proceeds as shown in the Table of Instalments hereon under the number selected and opposite the last completed age of such payee at the maturity of this policy and the instalment certain after the first to be increased by such surplus interest earnings as shall from time to time be determined and thereto apportioned by the company;

Income. Interest.

Option 3. Interest earnings upon the policy proceeds, accruing from the date of maturity of the policy, payable monthly, quarterly, semiannually, or annually, as may be requested in such application, at such rate as shall from time to time be determined and thereto apportioned by the company, but at a rate not less than 3% per annum, during the life of the payee or for a shorter fixed period if requested in said application, and thereafter to pay the policy proceeds in such manner and to such persons as shall have been agreed upon with the company at the time of such application;

Option 4. Equal annual, semiannual, quarterly, or monthly amounts, as may be specified in such application, payable until said proceeds with interest accumulations as herein provided are exhausted, the first such amount to be payable upon maturity of the policy, the balance remaining with the company after payment of each such periodic amount to be increased by interest earnings at such rate as shall from time to time be determined and thereto apportioned by the company, but at a rate not less than 3% per annum.

If requested in such application the annual instalment payments under options 1 or 2 will be made in semiannual, quarterly, or monthly parts. The equivalent of each $100 of annual instalment will be two semiannual instalments of $50.37 each, or four quarterly

instalments of $25.28 each, or twelve monthly instalments of $8.45 each.

Any agreement to make settlement under one of the foregoing options made during the continuance of this policy shall contain provision for revocation by the insured with the beneficiary, and for avoidance in case of assignment by the insured other than to the company, or death of the payee before the maturity of this policy.

If such application shall name more than one payee, or shall name a corporation as payee, these privileges shall be available only with the company's consent.

(Table of instalments under options one and two above omitted as immaterial. Contains a tabulation of amount due under options one and two in lieu of each $1,000 of the face amount of the policy.)

Application for insurance

Application, executed Dec. 22, 1922, omitted as immaterial, except the following:

5. a. (Q.) Beneficiary in case of your death?

(A.) Minneapolis Trust Company as trustee.

Unless otherwise specified herein and subject to my right to change any beneficiary as provided in the policy, the interest of any beneficiary who shall die before me shall vest in the surviving beneficiaries or if none survive me then such interest shall vest in me.

c. (Q.) Do you desire policy with change of beneficiary provision?

(A.) No.

10. (Q.) To whom do you desire policy or its cash value payable in case of maturity, or surrender during your lifetime, and options granted for change in plan of paid-up or extended insurance and for premium loan?

(A.) Minneapolis Trust Company, trustee.

11. (Q.) To whom shall dividends be payable?

(A.) Minneapolis Trust Company, trustee.

Petitioner's exhibit #2

Frederick B. Wells trust for the benefit of Shirley Irene Lindstrom

I, Frederick B. Wells, a resident of the city of Minneapolis, in the State of Minnesota, in consideration of the sum of one dollar ($1.00), hereby assign, transfer, and convey unto the Minneapolis Trust Company and Leontine Lindstrom, trustee, the following described property, which has been this day delivered to the Minneapolis Trust Company, trustee:

1. One certificate number 3 for seventy-five (75) shares, par value one hundred dollars ($100.00) per share, of the six per cent

(6%) cumulative preferred stock of the Wells Securities Company, a Delaware corporation;

2. One certain life insurance policy no. 591935 written under date of November 27, 1922, by the Massachusetts Mutual Life Insurance Company, a corporation of Springfield, Massachusetts, upon my life, for the benefit of Shirley Irene Lindstrom, a minor niece of Leontine Lindstrom, cotrustee;

3. The sum of $450.00 in cash;

not for their own use and benefit, however, but upon the trusts hereinafter defined:

1. (This paragraph is substantially identical to paragraph numbered 1 of the trust for Mary Wright Peavey Wells, petitioner's exhibit #1, [marginal] page 3 above, and is therefore omitted.)

2. During my life, or until the happening of the contingencies hereinafter mentioned, the net annual income of the trust estate, or so much thereof as may be necessary, and in the event the same is not sufficient such part of the trust estate as may be necessary for such purpose, shall be paid to the Massachusetts Mutual Life Insurance Company, of Springfield, Massachusetts, upon its demand, to pay the net annual premiums falling due upon that certain policy of life insurance hereinbefore conveyed and described. The trustees are given full power and authority, however, to deal with the said Insurance Company and with the said insurance, in any manner that they may deem for the best interests of the said Shirley Irene Lindstrom, and may borrow money thereon, or may avail themselves of any of the conditions, privileges, or benefits provided by the terms of the said policy of life insurance. The net premium to be paid is the sum which remains after deducting from the premium named in the policy, the dividend or earnings upon such policy for each year.

3. Upon my death, the trustees shall pay over and deliver to the Minneapolis Foundation, a corporation organized for charita-
16 ble and benevolent purposes under the laws of the State of Minnesota, with principal place of business in Minneapolis, Minnesota, the certificate of corporate stock in the Wells Securities Company, hereinbefore described and conveyed, or the securities held in lieu thereof and purchased with the proceeds of the sale of the aforesaid stock certificate, which part of the trust estate shall be held by the said Minneapolis Foundation, under the trust hereinafter defined, for the benefit of Wells Memorial, an unincorporated charity hereinafter identified.

4. Upon my death, the trustees shall collect from the Massachusetts Mutual Life Insurance Company, the proceeds of the life insurance policy hereinbefore described and conveyed, and they shall thereafter invest and reinvest the same within their discretion, and may sell and resell the securities so purchased.

5. After my death, the trustees shall disburse the annual income from that part of the trust estate remaining in their hands after the acceptance by the Minneapolis Foundation of the trust hereinafter defined, to-wit: The income upon the investment of the proceeds of the life insurance policy hereinbefore described and conveyed, and so much of the principal from time to time as may, in their discretion, be necessary for the support, maintenance and education of the said Shirley Irene Lindstrom, niece of the said Leontine Lindstrom, cotrustee, as aforesaid, in which behalf the opinion of Leontine Lindstrom, cotrustee, shall prevail as against the opinion of the Minneapolis Trust Company, cotrustee. The trustees shall pay over to Shirley Irene Lindstrom, when she attains the age of twenty-five years, the entire trust estate in their hands then remaining, but they may, in the exercise of their discretion, pay the same over when she attains the age of twenty-one years.

6. If the said Shirley Irene Lindstrom shall predecease me, this trust shall fail and determine upon her death, and the trustees herein named shall forthwith surrender the said policy of life insurance for cancellation, collect its cash surrender value, and pay the same over to the Minneapolis Foundation, a corporation hereinbefore described, to which corporation I hereby presently give and convey the same, not for its own use and benefit, however, but upon the trusts hereinafter defined.

7. If I shall be living when the said Shirley Irene Lindstrom attains the age of twenty-one years: Upon March 12th, 1938, this trust shall then cease and determine, and the trustees 17 shall forthwith surrender the said policy of life insurance for cancellation, collect its cash surrender value, and pay the same over to the said Shirley Irene Lindstrom, to whom I presently give and convey the same.

Trust in perpetuity to the Minneapolis Foundation for the benefit of Wells Memorial

In consideration of the payment of one dollar ($1.00), I presently give, grant, and convey in perpetuity, unto the Minneapolis Foundation, hereinbefore identified, one certificate number for seventy-five (75) shares, par value one hundred dollars ($100.00) per share, of the six per cent (6%) cumulative preferred stock of the Wells Securities Company, a Delaware corporation, or the proceeds of the sale thereof, whether in the form of cash or whether reinvested in the form of other securities, the same being a part of the trust estate hereinbefore created and its accumulation, if any, existing and remaining in the possession of the said Minneapolis Trust Company and the said Leontine Lindstrom, cotrustees, at the date of my death, or existing in their possession at the time of the happening of the

other contingencies hereinbefore named; not for its own use and benefit, however, but upon the trusts hereinafter defined.

1. The trustee shall take possession of, manage, and control the trust estate, and demand, receive, and collect the income and dividends thereon, and invest and reinvest the trust estate, and may retain the corporate stock herein conveyed, as long as it deems best, or may sell and convey the same at such prices, in such parcels, and upon such terms as it may deem best. I request, but do not define as a condition, that in the event the trustee receives all or a part of the capital stock of the Wells Securities Company herein conveyed and decides to sell the same, the trustee shall offer it for sale, first to the Wells Securities Company. In the event of a sale of the trust estate, the proceeds shall be reinvested only in securities now authorized under the laws of the State of Minnesota for the investment of the funds of trust companies.

2. The net annual income of the trust estate shall be paid to the rector, wardens, and vestrymen of St. Marks Church, in Minneapolis, Minnesota, a corporation, to be used by said corporation for the sole purpose of carrying on the work of the Wells Memorial, a definite charity conducted by the said Church Corporation. This grant, being a memorial to my father, Thomas Bucklin Wells, and my mother, Annie E. J. Wells, shall fail and determine when and if, in the opinion of the Minneapolis Foundation, Wells Memorial shall cease to be conducted as a definite charity under its present name, or shall cease to discharge substantially the functions which it now discharges, in which event I give and convey the net income from the trust estate to the Minneapolis Foundation, for its own uses and purposes.

3. This trust may, in the discretion of the Minneapolis Foundation, be administered together with a larger trust this day created upon similar conditions, for the benefit of the Wells Memorial and certain annuitants.

Provisions applicable to both trusts

The living trust, that is to say, the trust herein limited upon my life for a shorter period upon the happening of the contingencies named, wherein the Minneapolis Trust Company is Trustee, and the perpetual trust presently defined but to take effect thereafter, wherein the Minneapolis Foundation is trustee, shall both be administered under the direction of the court as by statute provided, but each is separate and distinct from the other and of like effect as though created and defined by separate instruments.

Should the accumulation of income provided in the living trust be for any reason declared void, such accumulation shall be paid over and delivered to the Minneapolis Foundation for its own uses and purposes, but should either the living trust or the perpetual trust herein defined be declared void as a trust, then the trust estate shall

revert to myself, if living; otherwise to my heirs, executors, administrators, or assigns.

In testimony wheerof I have hereunto set my hand this 30th day of December, 1922, at Minneapolis, Minnesota.

FREDERICK B. WELLS.

In the presence of—
H. VERDELIN.
PAUL REYERSON.

(Acknowledgment by Frederick B. Wells.)

(Acceptance by Minneapolis Trust Co.)

I, Leontine Lindstrom, residing at Nisswa, Minnesota, one of the cotrustees named in the foregoing instrument, having ex-
19 amined the said instrument, and being advised as to the terms and conditions of the trusts, hereby accept the position of trustee under the attached instrument, and acknowledge the receipt of the property therein described by the Minneapolis Trust Company, this 30th day of December, 1922.

LEONTINE LINDSTROM.

(Acceptance by Minneapolis Foundation.)

Policy number 591935

Massachusetts Mutual Life Insurance Company, Springfield, Massachusetts, incorporated 1851

Insured, Frederick B. Wells, age 49, of Minneapolis, Minnesota.

Beneficiary, the executors, administrators, or assigns of the said insured.

Sum insured, ten thousand dollars, payable at death of the insured.

Annual premium, $435.60; semiannual premium, $222.20; quarterly premium, $112.20.

Premium—Amount, four hundred thirty-five and 60/100 dollars, payable upon delivery of this policy, and annually thereafter, on the 21st day of each October. During the continuance of this policy, the insurance hereunder is based upon an annual premium payable in advance. If the annual premium is paid in instalments and this policy becomes a claim by death, any installments necessary to complete the premium for the then current policy year will be deducted in settlement of the claim hereunder.

This policy contains the following benefits: Annual dividends; optional methods of settlement; loan and surrender values; automatic premium loans.

Policy year and insurance begin October 21, 1922.

20 In consideration of the application for this policy, a copy of which is hereto attached, and of the payment of premiums as above specified, the Massachusetts Mutual Life Insurance Com-

pany promises to pay at its home office in Springfield, Mass., to the beneficiary herein, the sum insured, less any balance of the premium for the then current policy year, and less any other indebtedness to the company hereunder, upon receipt at said home office of due proof of the death of the insured while this policy is in force. If any beneficiary die before the insured, the interest of such beneficiary will vest in the executors or administrators of the insured unless otherwise provided herein.

The right successively to change the beneficiary as provided in the application for this policy has—been reserved.

If within the year next following the date of issue of this policy the insured, whether sane or insane, shall die by his own hand or act, the company will be liable only for the amount of the premiums paid hereunder.

This policy will be incontestable after one year from its date of issue, except for nonpayment of premium.

The benefits and provisions hereinafter stated are hereby referred to and made a part of this policy.

In witness whereof, the said company has caused this contract to be signed by its president and secretary, and countersigned by a duly authorized officer, at Springfield, Massachusetts, this 27th day of November, One thousand nine hundred and twenty-two.

WM. W. MCCLENCH,
President.
WHEELER H. HALL,
Secretary.

Countersigned:
B. E. GRAVES, *Asst. Secretary, Registrar.*

Ordinary life policy, payable at death. Premiums during life. Convertible. Annual distribution of surplus.

SPRINGFIELD, MASS., *January 16, 1923.*

The proceeds of this policy are hereby made payable, at the death of the insured, in one sum to the Minneapolis Trust Company and Leontine Lindstrom, of Minneapolis, Minnesota, as trustees, or their successors in trust, in accordance with trust agreement dated December 30, 1922, without liability on the part of the Insurance Company to see to the carrying out of the terms of the trust. The right to make future changes of any beneficiary herein, without the consent of the beneficiary or beneficiaries herein, has been revoked and canceled; a legal request therefor having been received.

ALBERT D. SHAW, *Asst. Secy.*

21 Benefits

Annual dividends

This policy will participate at the end of the first policy year, and annually thereafter, in the distribution of the surplus funds of the

company. At the option of the insured, dividends will be (1) paid in cash, on (2) applied in reduction of premiums, or (3) used to purchase participating paid-up additions, or (4) held by the company to accumulate subject to withdrawal on demand. If no election is made prior to any anniversary, the dividend for that anniversary will be held by the company to accumulate.

Paid-up additions will have a cash surrender value (full reserve) but the company may, at its option, defer the granting of such surrender value for a period not exceeding ninety days from the date of the application therefor.

Dividend accumulations will be credited at the end of each policy hear with interest at such rate, not less than three percent, as may be determined by the directors. Outstanding dividend accumulations will be added to the cash value of the policy in the event of surrender or to the amount payable under the policy if it becomes a claim by death.

Whenever, at the end of any policy year, the dividend accumulations, or the reserve on the paid-up additions, or both, together with the reserve on the policy shall equal the reserve on a fully paid-up policy of the same kind and amount, the company will indorse the policy as paid up in full; or when such aggregate amount shall equal the face amount of the policy, the company will pay the policy as an endowment: provided, in either case, request is made therefor and a satisfactory release is given.

Post mortem dividend

If this policy becomes a claim by death, the dividend for the current year will be paid in cash in addition to the sum insured.

Loans

Policy loan

On a proper assignment of this policy to the company, the company will loan on the sole security thereof, with interest at the rate of six percent per annum, the whole or any part of the cash value of the policy and of all paid-up additions thereto, at the end 22 of the policy year during which application for the loan is made, provided that from such loan the company will deduct any existing indebtedness hereunder with interest to the end of the current policy year, on the total loan and any unpaid portion of the premium for the current policy year, but the company, may, at its option, defer the granting of a loan, other than to pay premiums on policies in the company, for a period not exceeding ninety days from the date of the application therefor. If this policy is not assigned, the company will loan on the signature of the insured alone, provided the policy is not payable to a named beneficiary; or if payable to a named beneficiary, provided the loan is made for the sole purpose of paying the premium, or interest on any indebtedness to the company hereunder, or both, or provided the unlimited right

to change the beneficiary has been reserved in the application for, or amendments to, this policy. The whole or any part of a loan may be repaid at any time.

Automatic premium loan

If any premium is not paid at the expiration of the grace period, the company will, if a written request therefor has been made by the insured and any assignee, automatically loan the amount of such premium less any dividend payable and charge the same as an indebtedness against the policy, bearing interest at the rate of six percent per annum, if the tabular cash surrender value of the policy after the payment of such premium will be equal to the total indebtedness hereunder with interest thereon to the thirty-first day after the due date of the next premium payable hereunder, or to the next anniversary of the policy if no further premium will be payable; or if said cash value shall be less than said total indebtedness and interest the company will loan to the insured the largest installment of premium shown by the policy for which the cash value of the policy (after the payment of such installment) less indebtedness and interest may be sufficient, and thereafter the premium on this policy shall be payable in installments of like amount, unless a request for change in due form shall be made; but in no case will the company loan to the insured an amount less than a quarterly installment of premium unless the balance of premium shall have been paid; provided, however, that any dividend accumulations hereunder shall first be utilized for the payment of such premium, and that while any such premium loan is outstanding dividends apportioned
23 to the policy shall be applied to the reduction of said loan. The whole or any part of such loan may be repaid at any time. The insured with the consent of the beneficiary and of any assignee may revoke this provision by a writing filed with the company.

Failure to repay loan

Failure to repay a policy loan or premium loan, or to pay interest thereon, shall not avoid the policy unless the total indebtedness thereon including accrued interest shall equal or exceed the loan value at the time of such failure, nor until thirty-one days after notice has been mailed by the company to the last-known address of the insured and of any assignee of record at the home office of the company.

Privilege of change

This policy, while in full force, may be changed at any time, without medical examination, to a limited payment life or endowment policy of the same amount (except a continuous income policy), provided all parties in interest join in the request for change.

(1) Upon payment of the difference between the premiums less dividends under the new policy and the premiums less dividends

under this policy (exclusive of premiums paid for any disability benefit), which interest thereon at the rate of six percent compounded annually; provided, however, that the amount to be paid for such change shall not be less than the difference in the reserves on the respective policies. The new policy will be written at the same age and bear the same date as this policy.

(2) Or, without any payment on account of the time this policy has been in force, by payment thereafter of the premium specified below for the number of years indicated:

(Table showing annual premium for each $1,000 of face amount of policy if changed to limited payment life or endowment to mature at the end of 20 years, 25 years, and 30 years, omitted as immaterial.)

Provisions

Premiums

Premiums are payable, in advance, at the home office, or to the agent or cashier holding the company's official receipt signed by the president, or a vice president, or the secretary, which receipt shall not be valid unless countersigned by said agent or
24 cashier. If any premium is not paid before the expiration of the grace period, and if no provision for automatic payment is then applicable, the policy will lapse and the company's liability, if any, shall be as set forth hereinafter. (See Nonforfeiture provisions.) Premium payments may be changed on the written request of the insured, on the form required by the company, so as to be payable annually or in the semiannual or quarterly instalments hereinbefore specified, provided that the asset of any assignee of record at the home office will be required.

Grace

Any premium after the first may be paid when not more than thirty-one days past due, during which period the policy will be continued in full force. If death occurs within the period of grace, the unpaid premium will be deducted from the amount payable hereunder.

Assignment

The company will not recognize any assignment of this policy until the original assignment, or a duplicate, or a certified copy thereof, shall be filed at the company's home office, nor will it assume responsibility for the validity of an assignment.

Change of beneficiary

Subject to the rights of any assignee, the insured may, in accordance with any right reserved in the application for this policy, or amendments thereto, successively change the beneficiary hereunder; provided that any such change shall become operative only when indorsed upon the policy at the company's home office pursuant to such form of request as the company may require.

Entire contract

This policy and the application herefor constitute the entire contract between the parties. All statements made by the applicant shall, in the absence of fraud, be deemed representations and not warranties, and no such statement shall be used in defense to a claim under this policy unless it is contained in the application and a copy of the application is attached to this policy when issued.

Error in age

If the age of the insured was misstated in the application for, or any amendment to, this policy, and there has been no adjustment on account thereof, the amount payable hereunder will be such as the premium paid would have purchased at the correct age.

Optional methods of settlement

The insured, with the assent of any assignee, may elect by a writing filed with the company, with the right of revocation, to have the proceeds of this policy (including paid-up additions and dividend accumulations, if any) paid in equal annual, semiannual, quarterly, or monthly installments according to any one of options "A", "B", and "C", beginning upon receipt of due proof of the death of the insured, in lieu of payment one sum, or the insured may in like manner elect to leave the proceeds of this policy with the company in accordance with option "D"; and any such election or revocation shall become operative only when indorsed upon the policy, at the company's home office, pursuant to such form of request as the company may require. If the insured shall not have made any such election, the beneficiary entitled to receive said proceeds may, when the same become payable, exercise such right of election. If no beneficiary survives the insured, said proceeds will be paid in one sum to the executors or administrators of the insured. No installment under option "A", "B", or "C" may be commuted, transferred, or encumbered by any beneficiary, except upon the written authority of the insured filed with the company during his lifetime.

At the death of the last surviving beneficiary occurring subsequently to the death of the insured, any balance under option "A" will be paid in one sum to the executors or administrators of the said beneficiary, and any installments under option "B" or any stipulated installments under option "C" then remaining unpaid will be commuted upon the basis of three percent compound interest per annum and paid in one sum in like manner.

Provision may be made for the payment of a portion of the proceeds in cash and the balance under any installment option.

The equivalent of each $100 of annual installment will be two semiannual installments of $50.37 each, or four quarterly installments of $25.28 each, or twelve monthly installments of $8.45 each.

Option A. Equal installments, each of such an amount as may be elected, to continue until the proceeds, together with the interest herein specified, are exhausted; provided, that the final in-
26 stallment shall be for the balance only of said proceeds and specified interest. On each anniversary of the first installment interest at not less than three percent per annum will be added to the unpaid balance of said proceeds.

Option B. A specified number of equal installments, each of an amount (for each $1,000 of such proceeds) corresponding to the number of installments shown in the first table following. On each anniversary of the first installment there will also be paid such interest dividend as may be allotted by the directors.

(Table omitted as immaterial.)

Option C. With and without stipulated installments. Equal installments, continuous during the life of the beneficiary entitled to receive the first thereof, each of an amount (for each $1,000 of said proceeds), as shown in the following table, corresponding to the completed age of the beneficiary at the date of the death of the insured. If there are two or more beneficiaries entitled to share in the first of such installments, the said proceeds will be divided in proportion to the interests of the several beneficiaries, in determining the amount of the installment to be paid to each beneficiary, the share of each will be considered as the proceeds of a separate policy. On each anniversary of the installment there will also be paid such interest dividend as may be allotted by the directors, except that if the installments are paid annually no interest dividend will be paid after the stipulated installments have been paid. If the proceeds are taken without any stipulated installments, no interest dividend will be paid unless the income is payable in other annual installments.

(Table omitted as immaterial.)

Option D. The proceeds of this policy, or any part thereof, may be left with the company, and the company will pay interest thereon at such rate, not less than * * * [1] percent as may be determined by the directors. No interest payment may be transferred or encumbered by any beneficiary except upon the written authority of the insured filed with the company during his lifetime. The amount left may be withdrawn as shall be agreed upon with the company in the election of this option.

Cash value in installments

The cash surrender value of this policy and of any out-
standing paid-up additions, together with any dividend
27 accumulations, may be paid according to any one of the above options.

[1] Original exhibit illegible.

Notice

This policy while in force shall not be modified or altered, except upon the written request of the insured, and of other parties in interest, if any, and the approval on behalf of the company of the president, or a vice president, or the secretary, or an assistant secretary. All modifications and alterations shall comply with the legal requirements of the State within which the policy is delivered.

Nonforfeiture provisions

Basis of premium and reserves

The premium and reserves under this policy are based upon the American Experience Table of Mortality and interest at the rate of three percent per annum.

Payment of premiums from dividend accumulations

If a premium hereunder is not paid at the expiration of the grace period, and there are dividend accumulations to the credit of the policy they shall be used to pay the overdue premium if sufficient for the purpose, otherwise they shall be used to pay the largest installment of premium, shown by the policy, for which such accumulations may be sufficient, and thereafter the premium on this policy shall be payable in installments of like amount, unless a request for change in due form shall be made. In no case shall an amount of dividend accumulations less than a quarterly installment of premium be applied in payment of premium unless the balance of premium shall have been paid. The insured will forthwith be notified of the amount of the accumulations used and of the balance thereof.

Options in case of default

Participating paid-up or extended term insurance

Upon default in the payment of any premium after two full annual premiums have been paid hereon, this policy will be binding upon the company as participating paid-up insurance of a reduced amount unless participating extended term insurance shall have been selected by the insured as the automatic nonforfeiture option in case of default. The option may be changed at any time within thirty-one days of default, on written request filed with the company.

28 The participating paid-up insurance shall be payable at the same time and on the same conditions as in the original contract. The extended term insurance shall continue the insurance in force from the due date of the premium in default for its original amount and any outstanding paid-up additions less any indebtedness to the company hereon, but without the right to loans.

Cash surrender value

Within thirty-one days from the date of default, the insured may surrender the policy and, with the written assent of the person to whom it is made payable, receive its value in cash, but the company may, at its option, defer the granting of such surrender value for a period not exceeding ninety days from the date of the application therefor.

The values stated in the accompanying table are for even years. If there are outstanding paid-up additions to the policy, the values will be increased, but if there is any indebtedness to the company hereunder, the said values will be diminished. If the default occurs after a fractional part of the current year's premium has been paid, the values will be proportionately adjusted.

If this policy becomes paid up, or if extended term insurance is taken hereunder, the insurance will have a cash surrender value and the insured may surrender the insurance, and, with the written assent of the person to whom it is made payable, receive its value in cash, but the company may, at its option, defer the granting of such surrender value for a period not exceeding ninety days from the date of the application therefor.

Reinstatement

This policy may be reinstated at any time after default in the payment of any premium upon the production of evidence of insurability satisfactory to the company, and the payment of all overdue premiums and of any cash surrender value paid, with interest on both and on any indebtedness to the company hereunder at the time of default at the rate of six percent per annum, which indebtedness if not repaid, shall be reinstated as a lien against this policy.

A part or the whole of the cost to reinstate may be settled by loan, if the cash surrender value of this policy after reinstatement will be sufficient security therefor and for any reinstated indebtedness.

See conditions in "Loans" paragraphs.

29 (Tables omitted as immaterial. Table showing cash and loan value, value in paid-up insurance, and value in extended-term insurance, per each $1,000 face amount of the policy, under the nonforfeiture provisions above, and a table showing cash value of paid-up insurance at various ages in event the policy becomes paid up.)

(Application of the insured for this insurance policy omitted as immaterial.)

Petitioner's exhibit #3

Frederick B. Wells Trusts for the benefit of Wells Memorial and Certain Annuitants

I. Frederick B. Wells, a resident of the city of Minneapolis, in the State of Minnesota, in consideration of the sum of one dollar ($1.00)

hereby assign, transfer, and convey unto the Minneapolis Trust Company, a corporation organized under the laws of the State of Minnesota, with the principal place of business in the city of Minneapolis, in said State, the following described property:

The sum of $3,550.00 in cash. Certificate No. 2 for 625 shares, par value $100.00 per share, of the six percent (6%) cumulative, preferred stock, of the Wells Securities Company, a Delaware Corporation; not for its own use and benefit, however, but upon the trusts hereinafter defined:

1. The Minneapolis Trust Company, trustee, shall take possession of, manage, and control the trust estate, and demand, receive, and collect the income and dividends thereon, and invest and reinvest the trust estate, and may retain the corporate stock herein conveyed as long as it deems best, or may sell and convey the same at such prices, in such parcels and upon such terms as it may deem best. I request, but do not define as a condition, that the corporate stock hereby conveyed be retained until the trust estate is delivered over to the Minneapolis Foundation, but if the same or any part, be sold by the Minneapolis Trust Company, trustee, the proceeds shall be invested in such securities as are now designated by the laws of the State of Minnesota for the investment of the funds of trust companies, and I further request, but do not define as a condition, that in the event the trustee decides to sell said corporate stock, it shall first offer it for sale to the Wells Securities Company.

30 2. The net annual income of the trust estate, or so much thereof as may be necessary, and in the event the same is not sufficient, such part of the trust estate as may be necessary for such purpose, shall be paid to the Massachusetts Mutual Life Insurance Company, of Springfield Massachusetts, upon its demand, to pay the net annual premiums upon certain policies of life insurance hereinafter described, written upon my life for the benefit of certain persons. The trustee is given full power and authority, however, to deal with the said insurance policies in any manner that it may deem for the best interests of the beneficiaries, and may borrow money thereon, or may avail itself of any of the conditions, privileges, or benefits provided by the terms and conditions of the said policies of life insurance. The net premium to be paid is the premium remaining after deducting from the premium named in the policy, the dividend or earnings upon such policy for each year.

3. The said policies of life insurance are described as follows: No. 591932, payable October 21st each year, first premium $396.05; no. 591931, payable October 21st each year, first premium $395.50; no. 591934, payable October 21st each year, first premium $596.55; no. 591933, payable October 21st each year, first premium $2,156.00.

4. Any income from the trust estate, in excess of the sum necessary to pay the annual premiums, shall be retained by the trustee to pay life insurance premiums in years when the trust estate shall not produce sufficient income.

5. In case the said Massachusetts Mutual Life Insurance Company shall fail in any year during my lifetime, to demand payment of the premium upon one or more of the policies herein described, the trustee shall thereupon cease paying the annual premium upon such policy or policies of insurance, and shall thereafter pay no premium thereon.

6. In the event that during my life the premiums on all of the four policies named in paragraph numbered three (3) shall cease to be demanded or paid, by reason of the fact that all of the
31 beneficiaries named under the four policies shall predecease me, or by reason of some act of the trustee under the discretionary powers granted in paragraph two (2), then, and in that event, the trustee shall forthwith deliver over to the Minneapolis Foundation, a corporation organized under the laws of Minnesota solely for benevolent and charitable purposes, with principal place of business in the city of Minneapolis, in said State, the entire trust estate then in its possession, which delivery shall be made in like manner as herein provided to be made upon my death.

7. Upon my death, or upon the happening of any contingency named in paragraphs two (2) or six (6), which defeat the purpose of the trust, the entire trust estate with the accumulations, if any, shall be delivered over to the said Minneapolis Foundation, to be by the said Minneapolis Foundation used in accordance with the terms of the following trust.

I presently give, grant, and convey in perpetuity unto the said Minneapolis Foundation, the trust estate heretofore created, and its accumulations, if any, existing and remaining in the possession of the said Minneapolis Trust Company at the date of my death, or at the time death, or at the time of the occurrence of the other conditioins herein named, not for its own use and benefit, however, but upon the trust hereinafter defined.

1. (Omitted. Identical with paragraph 1 of petitioner's exhibit #2, [marginal] p. 20 above.)

2. (Omitted. Identical with paragraph 2 of petitioner's exhibit #2, [marginal] p. 20 above.)

Provisions applicable to both trusts

(Omitted. Identical with similar provisions of petitioner's exhibit #2, [marginal] p. 24 above.)

In witness whereof I have hereunto set my hand this 30th day of December, 1922, at Minneapolis, Minnesota.

FREDERICK B. WELLS.

In presence of—
BLANCHE LOVE.
C. F. DEAVER.
(Acknowledgment by Frederick B. Wells.)
(Acceptance by Minneapolis Trust Company.)
(Acceptance by Minneapolis Foundation.)

32 *Policy number 591391*

Massachusetts Mutual Life Insurance Company, Springfield, Massachusetts, incorporated 1851

Sum insured (commuted value of 240 monthly payments), $9,070. Life income, $50.00 each month; annual premium, $395.00; semi-annual premium, $201.75; quarterly premium, $101.90.

In consideration of the application for this policy, a copy of which is hereto attached, and of the payment upon delivery of this policy of the premium of three hundred ninety-five and 50/100 dollars and of a like amount—annually thereafter on the twenty-first day of each October during the continuance of this policy, the Massachusetts Mutual Life Insurance Company will pay to Annie M. Peavey, relative of the (hereinafter called the beneficiary) insured, age 64, at its home office in Springfield, Mass., $50.00 each month during the lifetime of said beneficiary, the first payment to be made upon receipt at said home office of due proof of the death, while this policy is in force, of Frederick B. Wells, age 49 (hereinafter called the insured), of Minneapolis, Minnesota, and subsequent payments to be made upon the first day of each month thereafter.

The insurance hereunder is based upon an annual premium payable in advance. If the annual premium is paid in installments and this policy becomes a claim by death, any installments necessary to complete the premium for the then current policy year will be an indebtedness to the company hereunder.

If the said beneficiary lives to receive more than 240 monthly payments, there will be paid at the death of said beneficiary, to the executors or administrators of said beneficiary, the commuted value of so many monthly payments, if any, as are necessary to make the total number of monthly payments a multiple of twelve. Payment to the above-named beneficiary is subject to the insured's right, if any, to change the beneficiary hereunder; in the event of such change, only 240 monthly payments (hereinafter called "the stipulated payments") will be made.

33 If the death of the beneficiary occurs after the death of the insured, and before all the stipulated payments have been made, the commuted value of the remainder of such payments will be paid in one sum to the executors or administrators of said beneficiary, unless otherwise provided by the insured.

If no beneficiary survives the insured, nine thousand and seventy dollars, the sum insured, as described above, will be paid in one sum to the executors or administrators of said insured.

The commuted value, hereinbefore referred to, of this policy, at the time when any one of the stipulated payments falls due, shall be the then present value of so many of the said stipulated payments as have not been made, computed at three percent compound interest per annum.

The right successively to change the beneficiary as provided in the application for this policy has been reserved.

None of the payments hereunder shall be commuted, transferred, or encumbered by any beneficiary, except upon the written authority of the insured filed with the company during his lifetime.

If within the year next following the date of issue of this policy the insured, whether sane or insane, shall die by his own hand or act, the company will be liable only for the amount of the premiums paid hereunder.

This policy will be incontestable after one year from its date of issue, except for nonpayment of premium.

The benefits and provisions hereinafter stated are hereby referred to and made a part of this policy.

Policy year and insurance begin October 21, 1922.

In witness whereof, the said company has caused this contract to be signed by its president and secretary, and countersigned by a duly authorized officer, at Springfield, Massachusetts, this 27th day of November, one thousand nine hundred and twenty-two.

WM. W. MCCLENCH, *President.*
WHEELER H. HALL, *Secretary.*

Countersigned:
B. E. GRAVES, *Asst. Secretary, Registrar.*

34 Monthly income ordinary life policy

First payment at death of the insured. Not less than 240 monthly payments. Premiums during life. Annual distribution of surplus.

Endorsements on first page of policy

SPRINGFIELD, MASS., *November 27, 1922.*

It is hereby provided that in the event of the death of the said Annie M. Peavy, before receiving any or all of the first 340 stipulated monthly installments as herein provided, so many of said 240 stipulated installments as then remain unpaid shall be paid as they become due to Mecca Peavey—relative of the insured—if living, otherwise to Helen R. Golding—valued employee of the insured, if living, otherwise to the trustees of the Minneapolis Foundation of Minneapolis, Minnesota, without obligation on the part of the Insurance Company to see to the carrying out of the terms of the trust.

WHEELER H. HALL, *Secretary.*

SPRINGFIELD, MASS., *March 22, 1923.*

The right to make future changes of any beneficiary herein without the consent of the beneficiary or beneficiaries herein, has been specifically surrendered and canceled.

ALBERT D. SHAW, *Asst. Sec'y.*

SPRINGFIELD, MASS., *July 25, 1924.*

Upon the representation of the insured that Annie M. Peavey, the first named beneficiary, has deceased, the continuous installments for which this policy provides are null and void, the annual premium being reduced in consequence from $395.50 to $395.10, beginning October 21, 1924.

GEORGE D. LANG, *Asst. Secy.*

SPRINGFIELD, MASS., *August 13, 1926.*

This company hereby acknowledges receipt of notice from the insured that Helen R. Golding, one of the beneficiaries hereunder, has become his wife, now subscribing herself as Helen R. Wells.

B. J. BERRY, *Secretary.*

Benefits

(Provisions relating to annual dividends and loans omitted. Substantially identical with similar benefit provisions of policy
35 No. 591935 printed above, [marginal] p. 26. Instead of the provision for change contained in policy No. 591935, [marginal] p. 26 above, this policy provides that any paid-up additions or dividend accumulations at death may be paid in cash or applied to increase the stipulated income payments, and that any indebtedness to the company at date of death which is not immediately paid will go to reduce income payments.)

Provisions

* * * * * * *

Subject to the rights of any assignee, the insured may, in accordance with any rights reserved in the application for this policy, or amendments thereto, successively change the beneficiary hereunder; provided that any such change shall become operative only when endorsed upon the policy at the company's home office pursuant to such form of request as the company may require.

* * * * * * *

(Remaining provisions are substantially identical to similar provisions of policy no. 591935 printed above, [marginal] p. 26, and are omitted as immaterial. Provisions for modification only upon notice, similar to provisions of policy no. 591935, [marginal] p. 26 above, are also omitted.

Nonforfeiture provisions

(Omitted. Substantially identical to nonforfeiture provisions of policy no. 591935, printed above, [marginal] p. 26. Table of cash and loan values, and values in paid-up and extended term insurance also omitted as immaterial.)

Reinstatement

(Policy provides for reinstatement at any time after default upon production of evidence of insurability and payment of all overdue premiums.)

(Application of insured for this policy omitted as immaterial.)

(This policy does not contain optional methods of settlement as in no. 591935, [marginal] page 26, above.)

36 *Policy number 591932*

Massachusetts Mutual Life Insurance Company, Springfield, Massachusetts, incorporated 1851

Sum insured (commuted value of 240 monthly payments), $9,070. Life income, $50.00 each month; annual premium, $396.05; semi-annual premium, $202.00; quarterly premium, $102.00.

In consideration of the application for this policy, a copy of which is hereto attached, and of the payment upon delivery of this policy of the premium of three hundred ninety-six and 5/100 dollars and of a like amount—annually thereafter on the twenty-first day of each October during the continuance of this policy, the Massachusetts Mutual Life Insurance Company will pay to Mecca Peavey (hereinafter called the beneficiary), relative of the insured, age 62, at its home office in Springfield, Mass., $50.00 each month during the lifetime of said beneficiary, the first payment to be made upon receipt at said home office of due proof of the death, while this policy is in force, of Frederick B. Wells (hereinafter called the insured), age 49, of Minneapolis, Minnesota, and subsequent payments to be made upon the first day of each month thereafter.

The insurance hereunder is based upon an annual premium payable in advance. If the annual premium is paid in installments and this policy becomes a claim by death, any installments necessary to complete the premium for the then current policy year will be an indebtedness to the company hereunder.

If the said beneficiary lives to receive more than 240 monthly payments, there will be paid at the death of said beneficiary, to the executors or administrators of said beneficiary, the commuted value of so many monthly payments, if any, as are necessary to make the total number of monthly payments a multiple of twelve. Payment to the above-named beneficiary is subject to the insured's right, if any, to change the beneficiary hereunder; in the event of such change, only 240 monthly payments (hereinafter called "the stipulated payments") will be made.

If the death of the beneficiary occurs after the death of the insured, and before all the stipulated payments have been

37 made, the commuted value of the remainder of such payments will be paid in one sum to the executors or administrators of said beneficiary, unless otherwise provided by the insured.

If no beneficiary survives the insured, nine thousand and seventy dollars, the sum insured, as described above, will be paid in one sum to the executors or administrators of said insured.

The commuted value, hereinbefore referred to, of this policy, at the time when any one of the stipulated payments falls due, shall be the then present value of so many of the said stipulated payments as have not been made, computed at three percent compound interest per annum.

The right successively to change the beneficiary as provided in the application for this policy has been reserved.

None of the payments hereunder shall be commuted, transferred, or encumbered by any beneficiary, except upon the written authority of the insured filed with the company during his lifetime.

If within the year next following the date of issue of this policy the insured, whether sane or insane, shall die by his own hand or act, the company will be liable only for the amount of the premiums paid hereunder.

This policy will be incontestable after one year from its date of issue, except for nonpayment of premium.

The benefits and provisions hereinafter stated are hereby referred to and made a part of this policy.

Policy year and insurance begin October 21, 1922.

In witness whereof, the said company has caused this contract to be signed by its president and secretary, and countersigned by a duly authorized officer, at Springfield, Massachusetts, this 27th day of November, one thousand nine hundred and twenty-two.

WM. W. MCCLENCH, *President.*
WHEELER H. HALL, *Secretary.*

Countersigned:
B. E. GRAVES, *Asst. Secretary, Registrar.*

Continuous monthly income ordinary life policy

First payment at death of the insured. Not less than 240 monthly payments. Premiums during life. Annual distribution of surplus.

38 Endorsements on first page of policy

SPRINGFIELD, MASS., *November 27, 1922.*

It is hereby provided that in the event of the death of the said Mecca Peavey, before receiving any or all of the first 240 stipulated monthly installments as herein provided, so many of said 240 stipulated installments as then remain unpaid shall be paid as they become due to Annie M. Peavey—relative of the insured—if living, otherwise to Helen R. Golding—valued employee of the insured, if

living, otherwise to the trustees of the Minneapolis Foundation of Minneapolis, Minnesota, without obligation on the part of the Insurance Company to see to the carrying out of the terms of the trust.

WHEELER H. HALL, *Secretary.*

SPRINGFIELD, MASS., *March 22, 1923.*

The right to make future changes of any beneficiary herein without the consent of the beneficiary or beneficiaries herein has been specifically surrendered and canceled.

ALBERT D. SHAW, *Asst. Sec'y.*

SPRINGFIELD, MASS., *August 13, 1926.*

This company hereby acknowledges receipt of notice from the insured that Helen R. Golding, one of the beneficiaries hereunder has become his wife, now subscribing herself as Helen R. Wells.

B. J. PERRY, *Secretary.*

(Remainder of policy no. 591932 omitted. It is identical with policy no. 591931, and substantially identical to policy no. 591935, printed above, [marginal] p. 26. Application of insured for policy no. 591932 omitted as immaterial.)

39 *Policy number 591933*

Massachusetts Mutual Life Insurance Company, Springfield, Massachusetts, incorporated 1851

Sum insured (commuted value of 240 monthly payments), $45,350.

Life income, $250.00 each month; annual premium, $2,156.00; semi-annual premium, $1099.75; quarterly premium, $555.25.

In consideration of the application for this policy, a copy of which is hereto attached, and of the payment upon delivery of this policy of the premium of twenty-one hundred and fifty-six dollars and of a like amount annually thereafter on the twenty-first day of each October during the continuance of this policy, the Massachusetts Mutual Life Insurance Company will pay Helen R. Golding, valued employee of (hereinafter called the beneficiary), the insured, age 38, at its home office in Springfield, Mass., $250.00 each month during the lifetime of said beneficiary, the first payment to be made upon receipt at said home office of due proof of the death, while this policy is in force, of Frederick B. Wells, age 49, of (hereinafter called the insured) Minneapolis, Minnesota, and subsequent payments to be made upon the first day of each month thereafter.

The insurance hereunder is based upon an annual premium payable in advance. If the annual premium is paid in installments and this policy becomes a claim by death, any installments necessary to complete the premium for the then current policy year will be an indebtedness to the company hereunder.

If the said beneficiary lives to receive more than 240 monthly payments, there will be paid at the death of said beneficiary, to the executors or administrators of said beneficiary, the commuted value of so many monthly payments, if any, as are necessary to make the total number of monthly payments a multiple of twelve. Payment to the above-named beneficiary is subject to the insured's right, if any, to change the beneficiary hereunder; in the event of such change, only 240 monthly payments (hereinafter called "the stipulated payments") will be made.

If the death of the beneficiary occurs after the death of the insured, and before all the stipulated payments have been made, the commuted value of the remainder of such payments will be paid in one sum to the executors or administrators of said beneficiary, unless otherwise provided by the insured.

If no beneficiary survives the insured, forty-five thousand three hundred and fifty dollars, the sum insured, as described above, will be paid in one sum to the executors or administrators of said insured. The commuted value, hereinbefore referred to, of this policy, at the time when any one of the stipulated payments falls due, shall be the then present value of so many of the said stipulated payments as have not been made, computed at three per cent compound interest per annum.

The right successively to change the beneficiary as provided in the application for this policy has been reserved.

None of the payments hereunder shall be commuted, transferred, or encumbered by any beneficiary, except upon the written authority of the insured filed with the company during his lifetime.

If within the year next following the date of issue of this policy the insured, whether sane or insane, shall die by his own hand or act, the company will be liable only for the amount of the premiums paid hereunder.

This policy will be incontestable after one year from its date of issue, except for nonpayment of premium.

The benefits and provisions hereinafter stated are hereby referred to and made a part of this policy.

Policy year and insurance begin October 21, 1922

In witness whereof the said company has caused this contract to be signed by its president and secretary, and countersigned by a duly authorized officer, at Springfield, Massachusetts, this 27th day of November, one thousand nine hundred and twenty-two.

WM. W. MCCLENCH, *President.*
WHEELER H. HALL, *Secretary.*

Countersigned:
B. E. GRAVES, *Asst. Secretary, Registrar.*

41 Continuous monthly income ordinary life policy

First payment at death of the insured. Not less than 240 monthly payments. Premiums during life. Annual distribution of surplus. Endorsements on first page of policy.

SPRINGFIELD, MASS., *November 27, 1922.*

It is hereby provided that in the event of the death of the said Helen R. Golding, before receiving any or all of the first 240 stipulated monthly installments as herein provided, so many of said 240 stipulated installments as then remain unpaid shall be paid as they become due to the trustees of the Minneapolis Foundation of Minneapolis, Minnesota, without obligation on the part of the Insurance Company to see to the carrying out of the terms of the trust.

WHEELER H. HALL, *Secretary.*

SPRINGFIELD, MASS., *March 22, 1923.*

The right to make future changes of any beneficiary herein without the consent of the beneficiary or beneficiaries herein, has been specifically surrendered and canceled.

ALBERT D. SHAW, *Asst. Sec'y.*

SPRINGFIELD, MASS., *August 13, 1926.*

This company hereby acknowledges receipt of notice from the insured that Helen R. Golding, one of the beneficiaries hereunder, has become his wife, now subscribing herself as Helen R. Wells.

B. J. PERRY, *Secretary.*

(Remainder of policy no. 591933 omitted. It is identical with policies nos. 591931 and 591932, above, and substantially identical with policy no. 591935, printed above, [marginal] p. 26. Application of insured for policy no. 591933 also omitted as immaterial.)

Policy number 591934

Massachusetts Mutual Life Insurance Company, Springfield, Massachusetts. Incorporated 1851

Sum insured (commuted value of 240 monthly payments), $13,605. Life income, $75.00 each month; annual premium, $596.55; semi-annual premium, $304.28; quarterly premium, $153.68.

42 In consideration of the application for this policy, a copy of which is hereto attached, and of the payment upon delivery of this policy of the premium of five hundred ninety-six and 55/100 dollars and of a like amount annually thereafter on the twenty-first day of each October during the continuance of this policy, the Massachusetts Mutual Life Insurance Company will pay to George B. Charnley, relative (hereinafter called the beneficiary) of the insured, age 58, at its home office in Springfield, Mass., $75.00 each month during the lifetime of said beneficiary, the first payment to be made upon receipt at said home office of due proof of the death,

while this policy is in force, of Frederick B. (hereinafter called the insured) Wells, age 49, of Minneapolis, Minnesota, and subsequent payments to be made upon the first day of each month thereafter.

The insurance hereunder is based upon an annual premium payable in advance. If the annual premium is paid in installments and this policy becomes a claim by death, any installments necessary to complete the premium for the then current policy year will be an indebtedness to the company hereunder.

If the said beneficiary lives to receive more than 240 monthly payments, there will be paid at the death of said beneficiary, to the executors or administrators of said beneficiary, the commuted value of so many monthly payments, if any, as are necessary to make the total number of monthly payments a multiple of twelve. Payment to the above-named beneficiary is subject to the insured's right, if any, to change the beneficiary hereunder; in the event of such change, only 240 monthly payments (hereinafter called "the stipulated payments") will be made.

If the death of the beneficiary occurs after the death of the insured, and before all the stipulated payments have been made, the commuted value of the remainder of such payments will be paid in one sum to the executors or administrators of said beneficiary, unless otherwise provided by the insured.

43 If no beneficiary survives the insured, thirteen thousand six hundred and five dollars, the sum insured, as described above will be paid in one sum to the executors or administrators of said insured.

The commuted value, hereinbefore referred to, of this policy, at the time when any one of the stipulated payments falls due, shall be the then present value of so many of the said stipulated payments as have not been made, computed at three percent compound interest per annum.

The right successively to change the beneficiary as provided in the application for this policy has been reserved.

None of the payments hereunder shall be commuted, transferred, or encumbered by any beneficiary, except upon the written authority of the insured filed with the company during his lifetime.

If within the year next following the date of issue of this policy, the insured, whether sane or insane, shall die by his own hand or act, the company will be liable only for the amount of the premiums paid hereunder.

This policy will be incontestable after one year from its date of issue, except for nonpayment of premium.

The benefits and provisions hereinafter stated are hereby referred to and made a part of this policy.

Policy year and insurance begin October 21, 1922.

In witness whereof, the said company has caused this contract to be signed by its president and secretary, and countersigned by a duly authorized officer, at Springfield, Massachusetts, this 27th day of November, one thousand nine hundred and twenty-two.

WM. W. MCCLENCH, *President.*
WHEELER H. HALL, *Secretary.*

Countersigned:

B. E. GRAVES, *Asst. Secretary, Registrar.*

44 Continuous monthly income ordinary life policy

First payment at death of the insured. Not less than 240 monthly payments. Premiums during life. Annual distribution of surplus.

Endorsements on first page of policy

SPRINGFIELD, MASS., *November 27, 1922.*

It is hereby provided that in the event of the death of the said George B. Charnley, before receiving any or all of the first 240 stipulated monthly installments as herein provided, so many of said 240 stipulated installments as then remain unpaid shall be paid as they become due to Helen R. Golding—valued employee of the insured—if living, otherwise to the trustee of the Minneapolis Foundation of Minneapolis, Minnesota, without obligation on the part of the Insurance Company to see to the carrying out of the terms of the trust.

WHEELER H. HALL, *Secretary.*

SPRINGFIELD, MASS., *March 22, 1923.*

The right to make future changes of any beneficiary herein without the consent of the beneficiary or beneficiaries herein, has been specifically surrendered and canceled.

ALBERT D. SHAW, *Asst. Sec'y.*

SPRINGFIELD, MASS., *August 13, 1926.*

This company hereby acknowledges receipt of notice from the insured that Helen R. Golding, one of the beneficiaries hereunder, has become his wife, now subscribing herself as Helen R. Wells.

B. J. PERRY, *Secretary.*

(Remainder of policy no. 591934 omitted. It is identical with policies nos. 591931, 591932, and 591933, and substantially identical with policy no. 595935, printed above [marginal], p. 26. Application of insured for policy no. 591934 omitted as immaterial.)

45 *Petitioner's exhibit # 4*

Frederick B. Wells Trust for the benefit of Thomas Bucklin Wells, Frank Hutchison Peavey Wells, Frederick Brown Wells, Jr., and Mary Wright Peavey Wells

I, Frederick B. Wells, a resident of the city of Minneapolis, in the State of Minnesota, in consideration of the sum of one dollar ($1.00), hereby assign, transfer, and convey unto the Minneapolis Trust Company, trustee, the following described property, which has been this day delivered to the said trustee.

Certificate no. 16 for 1,000 shares of the six percent cumulative preferred stock of the Wells Securities Company, a Delaware corporation, said stock being of the par value of $100.00 per share; not for its own use and benefit, however, but upon the trusts hereinafter defined:

1. My trustee shall take possession of, manage, and control the trust estate, and demand, receive, and collect the income and dividends therefrom, and invest and reinvest the trust estate; and may retain the corporate stock herein conveyed as long as it deems best, or may sell and convey the same, at such prices, in such parcels, and upon such terms as it may deem best. I request, but do not define as a condition, that the trustee retain the capital stock hereby conveyed; but should the trustee, in the exercise of its powers and of its discretion, elect to sell the said corporate stock, the proceeds derived from such sale shall, except in the single event that the sale of a portion of the trust estate may be necessary to pay premiums on the life and accident insurance policies hereinafter described, be invested and reinvested only in such securities as are now authorized by the laws of the State of Minnesota for the investment of the deposits of savings banks. I further request, but do not define as a condition, that before a sale of any of the said corporate stock, it shall first be offered for sale to the Wells Securities Company.

2. The income from the trust estate, and so much of the trust estate as may be necessary, shall be paid and expended by my trustee to discharge the net annual premiums due and payable on
46 those certain policies of accident insurance and those certain policies of life insurance hereinafter described, my trustee having being irrevocably designated as the beneficiary of the life insurance policies, and as beneficiary of the death benefit recoverable under the accident insurance policies. The net premiums shall be paid to the insurance companies hereinafter named, and such premium in case of the life insurance shall be the sum remaining to be paid after deducting from the premium named in the face of the policy, the dividend or earnings on such policy for each year, and in case of the accident insurance, the flat premium named in the policies. The trustee is given full power and authority, however, to deal with the said Insurance Companies and with the said insur-

ance, in any manner that it may deem for the best interests of the beneficiaries, and may borrow money thereon, or may avail itself of any of the conditions, privileges or benefits provided by the terms of the said policies of life insurance. The policies of life insurance are particularly described as follows:

Name of company	Policy No.	Date of policy	Face value
Mutual Benefit Life Ins. Co. of New Jersey	937, 864	Mar. 12, 1920	$25, 000
Same	333, 420	Oct. 17, 1911	5, 000
Same	465, 619	Oct. 17, 1911	5, 000
Northwestern Mutual Life Ins. Co. of Milwaukee	438, 577	Oct. 17, 1911	4, 597
Same	1, 417, 156	May 5, 1920	100, 000
Same	1, 427, 675	June 1, 1920	5, 000
State Mutual Life Assurance Co. of Worcester, Mass	906, 945	Dec. 20, 1911	10, 000
Provident Mutual Life Ins. Co. of Philadelphia	67, 986	May 20, 1907	5, 000
Same	181, 485	Dec. 30, 1911	5, 000
	181, 486	Dec. 30, 1911	10, 000
Total life insurance			$174, 597

The policies of accident insurance are particularly described as follows:

Name of company	Policy No.	Date of policy	Face value
Aetna Life Insurance Co	PA 9764	May 10, 1922	$30, 000
Preferred Accident Ins. Co. of New York	749, 189	Aug. 16, 1911	10, 000
Connecticut General Life Ins. Co	DWB5478	Sept. 27, 1920	9, 600
Total accident insurance			$49, 600
Grand total life and accident			$224, 197

47 3. Any income from the trust estate in excess of the total sum necessary to pay the successive net annual premiums upon the policies of insurance hereinbefore described shall be retained by my trustee until a sum has accumulated equal to the amount necessary to pay two successive annual premiums upon all of the policies of insurance hereinbefore described, any accumulations in excess of which amount shall be distributed between my children, herein named as beneficiaries, in the proportion in which they shall ultimately receive the income from the trust estate, and in the event that any accumulation provided for herein shall be held invalid for any reason, such accumulation shall be distributed in the same manner.

4. Upon my death my trustee shall collect the principal sums named in the aforementioned policies of life insurance, to wit: The sum of one hundred seventy-four thousand five hundred and ninety-seven dollars ($174,597), and in the event of my death by accident my trustee shall collect in addition thereto the sums payable under the aforementioned policies of accident insurance, and shall expend the proceeds thereof, together with any unexpended income in its possession in the purchase, at their appraised value, from the executor of my estate, of securities belonging to the said estate, and such

securities shall thereupon become, and be, a part of the trust estate hereby created, and shall be subject to all of the terms and conditions herein defined, including those limiting the reinvestment of funds derived from sales as set forth in paragraph 1. In case of sale of such securities I request but do not define as a condition that such securities be first offered for sale to the The Wells Securities Company.

5. When the trust estate shall have been augmented by the purchase of securities from the executor of my estate as aforesaid, the income from the trust estate hereby created and ultimately the trust estate itself, shall, in order to partially equalize a preference in favor of my daughter under trusts heretofore created by me, be distributed as follows:

(1) The income from the capital sum of two hundred and twenty-five thousand dollars ($225,000.00) of the trust estate shall be paid in equal parts to my three sons, Thomas Bucklin Wells, born August 26th, 1902; Frank Hutchison Peavey Wells, born September 29th, 1905; and Frederick Brown Wells, Jr., born November 6th, 1906, in equal quarterly payments, so long as they and each of them shall live, with power to the trustee, in its discretion, upon
48 advice of a parent or guardian, to withhold the income from any one or all of my sons until he, or they, shall have attained the age of thirty (30) years.

(2) The income from the residue of the trust estate shall be divided equally between my three sons aforementioned, and my daughter, Mary Wright Peavey Wells, and shall be paid to each of them in equal quarterly installments so long as they and each of them shall live.

(3) Upon the death of each of my sons, seventy-five thousand dollars ($75,000.00) in cash or securities, plus one fourth of the residue of the trust estate over and above two hundred and twenty-five thousand dollars ($225,000.00) in value, shall be paid over, or delivered, by my trustee to such person or persons as such deceased son shall have designated by will to receive it, and the appointment failing, to such person or persons as are entitled to receive it under the laws of descent then in effect in the State of Minnesota.

(4) Upon the death of my daughter, Mary Wright Peavey Wells, one fourth of the residue of the trust estate over and above the sum of two hundred and twenty-five thousand dollars ($225,000.00) in cash or securities, shall likewise be paid over, or delivered, to such persons as she may by will designate, and the appointment failing, to such persons as are entitled to receive the same under the statutes of descent in effect in the State of Minnesota at the time of her death.

I hereby reserve the right to appoint a trustee to act under the terms of this instrument, in the event of the resignation or disqualification of the trustee herein named, or of any successor in trust.

In testimony whereof, I have hereunto set my hand at Minneapolis, Minnesota, this 6th day of August, 1923.

FREDERICK B. WELLS.

Signed in the presence of—
JOHN R. WARE.
BLANCHE LOVE.

(Acknowledgment by Frederick B. Wells.)
(Acceptance by Minneapolis Trust Co.)

49

No. 937864

Organized 1845

Insured. Amount. When, where, and to whom payable.

The Mutual Benefit Life Insurance Company, of Newark, New Jersey, in consideration of the payment of premiums as hereinafter provided, hereby insures the life of Frederick B. Wells, of Minneapolis in the county of Hennepin, State of Minnesota (herein called the insured), in the sum of twenty-five thousand dollars, for the term of life, payable at its office in Newark, New Jersey, to Mary D. Wells, wife of the insured, if living. Otherwise to the executors, administrators, or assigns of the said Mary D. Wells, ~~insured,~~ immediately upon receipt of due proof of the death of the insured. Any error made in stating the age of the insured will be adjusted by paying such amount as the premiums paid would purchase at the correct age. Any indebtedness to the company on this policy and any unpaid instalments of the then current year's premium will be deducted from the sum insured.

Premiums.

The annual premium of ten hundred and three dollars and cents will be payable by the insured on delivery hereof and on the twelfth day of March in each year during the continuance of this policy, at the company's office in Newark, New Jersey, or to agents in exchange for receipts signed by the president or treasurer. In lieu of the annual premium the company will accept five hundred and eleven dollars and fifty cents semi-annually in advance, or two hundred and sixty dollars and seventy-five cents quarter-annually in advance. This policy will not take effect unless the first premium or agreed instalment thereof shall be actually paid during the lifetime of the insured.

Assignment.

No assignment of this policy shall affect the company until it shall have received written notice thereof.

50

Agents.

Agents are not authorized to make, alter, or discharge contracts.

Incontestability. **If within one year the insured shall commit suicide, while sane or insane, this policy will be null and void. This policy will be incontestable after one year from its date of issue except for nonpayment of premium.**

The provisions and agreements printed on the second and third pages hereof are a part of this contract. Special privilege no. 1 erased by request before execution of this contract.

In witness whereof, the Mutual Benefit Life Insurance Company has, by its president and secretary, signed this contract at the city of Newark, in the State of New Jersey, this twelfth day of March, one thousand nine hundred and twenty

One word erased and four words interlined before execution.

Examined.

C. R. P.

FRED FRELINGHUYSEN,
President.

J. WM. JOHNSON,
Secretary.

Age, 47.

Attest:

R. G. MOWELL, *Registrar.*

Whole life policy. Premiums payable for life. Dividends annually beginning with 2d policy year as provided herein.

(Policy no. 937864 contains standard nonforfeiture provisions, omitted here as immaterial, under which the insured can, at the end of any policy year, surrender the policy for its cash surrender value, surrender for a nonparticipating paid-up policy, or, if not surrendered after default, the policy can be automatically extended from date of default for a sum equal to the amount of the policy and any existing dividend additions less indebtedness to the company.

A table is included in the policy showing the cash surrender and loan value, and value of automatic extended insurance
51 and paid-up policy value at the end of each year from the first through the twentieth year.

Provision is also made for one month's grace in which to pay premiums and for reinstatement upon evidence of insurability. Provision is further made for loans on the sole security of the policy up to the limit of the cash surrender value.)

On the second page of the policy appears the following endorsement:

"As required by the laws of Minnesota, the company reserves the right to defer any payment under this policy on account of a loan

or of a cash surrender value for a period not exceeding sixty days after application therefor.

"R. G. MOWELL, Registrar."

(Policy no. 937864 also contains standard special privileges provisions under which the insured may have the whole or any portion of the proceeds of the policy at maturity retained by the company until the death of the beneficiary, the company to pay interest to the beneficiary and to permit the beneficiary to withdraw at any interest date the amount retained by the company; or the insured may have the whole or any portion of the proceeds at maturity paid in a specified number of equal annual instalments or have the proceeds paid in equal annual instalments during the lifetime of the beneficiary. An instalment table is included showing the amount payable under each of these provisions in lieu of each $1,000 face value payable at maturity.

The provision reserving to the insured the right to have the beneficiary changed has been stricken out of the policy.

The policy further contains standard provisions for the payment of dividends. These provisions are omitted as immaterial and are similar to provisions of other policies printed above.)

(Application of the insured for policy No. 937864 is omitted as immaterial. In this application the insured indicates that he does not wish to retain the right to change the beneficiary.)

52

(Original)

Assignment of policy no. 937864 on the life of Frederick B. Wells in The Mutual Benefit Life Insurance Company, of Newark, New Jersey

I, Mary Drew Wells, the beneficiary and absolute owner of the above-described policy of insurance, do hereby assign said policy to Minneapolis Trust Company, trustee, of Minneapolis, in the State of Minnesota.

Witness my hand and seal at Minneapolis, in the State of Minnesota, this first day of May 1923.

MARY DREW WELLS [L.S.]

_____ [L.S.]

Signed in the presence of—
EDITH A. LOUCKS.
EVA J. PATTERSON.

Received by the Mutual Benefit Life Ins. Co., of Newark, N.J. June 27, 1923.

J. WM. JOHNSON, *Sec'y.*
W.J.A.

No. 333420

Organized 1845

Insured. The Mutual Benefit Life Insurance Company of Newark, New Jersey, in consideration of the payment of premiums as hereinafter provided, hereby insures the life of Frederick B. Wells, of Minneapolis in the county of Hennepin, State of Minnesota (herein called the insured)

Amount. in the sum of five thousand dollars, for the term of life,

When, where, and to whom payable. payable at its office in Newark, New Jersey, to Mary D. Wells, his wife, if living, otherwise to the executors, administrators or assigns of the insured, immediately upon receipt of due proof of the death of the insured. Any error made in stating the age of the insured will be adjusted by paying such amount as the premiums
53 paid would purchase at the correct age. Any indebtedness to the company on this policy and any unpaid installments of the then current year's premium will be deducted from the sum insured.

Premiums. The annual premium of one hundred and eleven dollars and thirty cents will be payable by the insured on delivery hereof and on the fifteenth day of October in each year during the continuance of this policy, at the company's office in Newark, New Jersey, or to agents in exchange for receipts signed by the president or treasurer. In lieu of the annual premium the company will accept fifty-six dollars and seventy-five cents semiannually in advance, or twenty-eight dollars and ninety-five cents quarter annually in advance. This policy will not take effect unless the first premium or agreed instalment thereof shall be actually paid during the lifetime of the insured.

Assignment. No assignment of this policy shall affect the company until it shall have received written notice thereof. This policy is issued in lieu of another bearing the same number, for the same amount dated 20 August, 1902, for the purpose of changing the plan and annulling the supplemental agreement.

Agents. Agents are not authorized to make, alter, or discharge contracts.

Incontestibility. If within one year the insured shall commit suicide, while sane or insane, this policy will be null and void. This policy will be incontestable ~~after one year from its date of issue~~ except for nonpayment of premium.

The provisions and agreements printed on the second and third pages hereof are a part of this contract. As to nonforfeiture provisions and dividends this policy will be treated as if dated and issued on 15 October, 1902.

In witness whereof the Mutual Benefit Life Insurance Company has by its president and secretary, signed this contract at the
54 city of Newark, in the State of New Jersey, this seventeenth day of October, one thousand nine hundred and eleven.
Eight words erased before execution.
Examined.
D.

FRED FRELINGHUYSEN,
President.
J. WM. JOHNSON,
Secretary.

Attest:
LEWIS A. MORNINGSTON, *Registrar.*

Age 29 in 1902.
Whole life policy. Premiums payable for life.
Dividends annually beginning with 2d policy year as provided herein.

* * * * * * *

Special privileges

If not assigned, this policy may be returned to the company at its office in Newark, New Jersey, with the insured's written request for the appropriate indorsement of the policy by the company:
1. To have the beneficiary changed. This change may be made at any time and from time to time while the policy is in force, or within one month from default in premium payments.

* * * * * * *

(In all other respects policy no. 333420 is substantially similar to policy no. 937864 above. Application of the insured for policy no. 333420 is omitted as immaterial.)

OCTOBER 4TH, 1911.

In consideration of the payment of #485.25 for adjustment of premiums, the Mutual Benefit Life Insurance Company is hereby requested to reissue policy #333420 on the life of Frederick B. Wells, on the policy form now in use by the company, changed from the 20-payment life plan to the ordinary life plan, as of original date, Oct. 15th, 1902. From the credit of $485.25 on account of the change deduct $43.08, the cash due to renew the changed policy for October 1911, leaving $442.17 to be paid in cash by the com-
55 pany, receipt of which is hereby acknowledged. We hereby request that the supplemental instalment agreement now attached to the policy be annulled.

FREDERICK B. WELLS.
MARY D. WELLS.

Request for change of beneficiary

MINNEAPOLIS, MINN., *May 7th, 1910.*

I, the party insured under policy no. 333420 in the Mutual Benefit Life Insurance Company, hereby request the company to change the beneficiary under said policy from estate to Mary Drew Wells my wife,[2] alternatively.

F. B. WELLS.

Request for change of beneficiary

MINNEAPOLIS, MINN., *Jan. 15th, 1907.*

I, the party insured under policy no. 333420 in the Mutual Benefit Life Insurance Company, hereby request the company to change the beneficiary under said policy from Annie E. J. Wells, my mother, to my estate.[3]

FREDERICK B. WELLS.

Request to pay proceeds of policy in instalments

MINNEAPOLIS, MINN., *August 2, 1902.*

The undersigned, insured under policy no. 333420 in the Mutual Benefit Life Insurance Company, hereby requests the company, as provided in special privilege no. 3, to pay the proceeds of the policy at its maturity in ten equal annual instalments.

Should the beneficiary not live to receive the ten instalments the remaining unpaid instalments are to be payable to my estate.

FREDERICK BROWN WELLS.

Assignment

Original.

For one dollar, to me in hand paid, and for other valuable considerations (the receipt of which is hereby acknowledged) I hereby assign, transfer, and set over to Mary D.
56 Wells whose p.o. address is Minneapolis, Minn., all my right, title, and interest, in policy no. 333420, issued by the Mutual Benefit Life Insurance Company, of Newark, N.J., and for the consideration above expressed I do also for myself my executors and administrators, guarantee the validity and sufficiency of the foregoing assignment to the above-named assignee, her executors, administrators, or assigns, and her title to the said policy will forever warrant and defend.

[2] Insert the word "absolutely," or "alternatively" if new beneficiary is to be other than the insured.

[3] Insert the word "absolutely," or "alternatively" if new beneficiary is to be other than the insured

In witness whereof I have hereunto set my hand and seal this 29th day of January, 1921.

FREDERICK B. WELLS. [SEAL.]
——— ——— [SEAL.]
——— ——— [SEAL.]
——— ——— [SEAL.]

STATE OF MINNESOTA, *County of Hennepin.*

On this 29th day of January in the year of our Lord 1921, before me, the undersigned, a notary public residing in Minneapolis, Minn., duly commissioned and thereunto authorized, came Frederick B. Wells to me known and known to me to be the individual described in and who executed the foregoing assignment, and acknowledged that he executed the same.

(Notary sign here.) C. W. LANE,
Notary Public, Hennepin County, Minnesota.

My commission expires June 29, 1923.

Received by the Mutual Benefit Life Ins. Co., of Newark, N.J.
J. WM. JOHNSON, *Sec'y.*

APR. 4, 1921.

(Original)

Assignment of policy No. 333420 on the life of Frederick B. Wells in the Mutual Benefit Life Insurance Company of Newark, New Jersey

I, Mary Drew Wells, the beneficiary and absolute owner of the above described policy of insurance, do hereby assign
57 said policy to Minneapolis Trust Company, trustee, of Minneapolis, in the State of Minnesota.

Witness my hand and seal at Minneapolis, in the State of Minnesota, this first day of May, 1923.

MARY DREW WELLS. [L.S.]
Signed in the presence of— ———. [L.S.]
EDITH A. LOUCKS.
EVA J. PATTERSON.

I, Frederick B. Wells, the insured under the above-described policy of insurance, hereby acknowledge that I have previously assigned to Mary Drew Wells all my right, title, and interest in and to said policy, that I have no right to object to the above assignment nor wish to do so.

Witness my hand and seal at Minneapolis, in the State of Minnesota, this twenty-fifth day of June 1923.

FREDERICK B. WELLS. [L.S.]
Signed in the presence of— ———. [L.S.]
BLANCHE LOVE.
W. F. GENELL.

Received by the Mutual Benefit Life Ins. Co., of Newark, N.J., Jul. 3, 1923.

J. WM. JOHNSON, *Sec'y.*
W.J.A.

No. 465619

Organized 1845

The Mutual Benefit Life Insurance Company, of Newark, New Jersey, in consideration of the payment of premiums as hereinafter provided, hereby insures the

Insured. life of Frederick B. Wells, of Minneapolis, in the county of Hennepin, State of Minnesota (herein called the

Amount. insured) in the sum of five thousand dollars, for the term of life, payable at its office in Newark, New Jersey, to

When, where, and to whom payble. Mary D. Wells, his wife if living, otherwise to the executors, administrators, or assigns of the insured, immediately upon receipt of due proof of the death of the insured.

58 Any error made in stating the age of the insured will be adjusted by paying such amount as the premiums paid would purchase at the correct age. Any indebtedness to the company on this policy and any unpaid instalments of the then current year's premium will be deducted from the sum insured.

Premiums. The annual premium of one hundred and twenty-seven dollars and ninety cents, will be payable by the insured on delivery hereof and on the fifth day of October in each year during the continuance of this policy, at the company's office in Newark, New Jersey, or to agents in exchange for receipts signed by the president or treasurer. In lieu of the annual premium the company will accept sixty-five dollars and twenty-five cents semi-annually in advance, or thirty-three dollars and twenty-five cents quarter annually in advance. This policy will not take effect unless the first premium or agreed instalment thereof shall be actually paid during the lifetime of the insured.

Assignment. No assignment of this policy shall affect the company until it shall have received written notice thereof. This policy is issued in lieu of another bearing the same number for the same amount dated 5 October, 1907, for the purpose of changing the plan.

Agents. Agents are not authorized to make, alter, or discharge contracts.

Incontestability. If within one year the insured shall commit suicide, while sane or insane, this policy will be null and void. This policy will be incontestable after one year from the date of ~~issue~~ except for nonpayment of premium.

The provisions and agreements printed on the second and third pages hereof are a part of this contract. As to nonforfeiture provisions and dividends this policy will be treated as if dated and issued on 5 October, 1907.

In witness whereof, the Mutual Benefit Life Insurance Company has, by its president and secretary, signed this contract at the
59 city of Newark, in the State of New Jersey, this seventeenth day of October, one thousand nine hundred and eleven.

Eight words erased before execution.

Examined.

D.

Age 34 in 1907.

FRED FRELINGHUYSEN,
President.
J. WM. JOHNSON,
Secretary.

Attest:

LEWIS A. MORNINGSTON, *Registrar.*

Whole life policy. Premiums payable for life. Dividends annually beginning with 2d policy year as provided herein.

* * * * * * *

Special privileges

If not assigned, this policy may be returned to the company at its office in Newark, New Jersey, with the insured's written request for the appropriate indorsement of the policy by the company:

1. To have the beneficiary changed. This change may be made at any time and from time to time while the policy is in force, or within one month from default in premium payments. * * *

(In all other respects policy no. 465619 is substantially similar to policy no. 937864 above. Application of the insured for policy no. 465619 is omitted as immaterial.)

OCTOBER 5TH, 1911.

In consideration of the payment of $163.97 for difference in premiums less expenses, the Mutual Benefit Life Insurance Company is hereby requested to reissue policy #465619 on the life of Frederick B. Wells, on the policy form now in use by the company changed from the 20-payment-life plan, to the ordinary life plan, as of original date, Oct. 5th, 1907. From the credit of $163.97 on account of the change, deduct $110.30, the cash due to renew the changed
60 policy for 1911, leaving $53.67 to be paid in cash by the company, receipt of which is hereby acknowledged.

FREDERICK B. WELLS.
MARY D. WELLS.

Request for change of beneficiary

MINNEAPOLIS, MINN., *May 7th, 1910.*

I, the party insured under policy no. 465619 in the Mutual Benefit Life Insurance Company, hereby request the company to change the beneficiary under said policy from estate to Mary Drew Wells my wife,[4] alternatively.

F. B. WELLS.

[4] Insert the word "absolutely" or "alternatively" if new beneficiary is to be other than the insured.

Assignment

Original.

For one dollar, to me in hand paid, and for other valuable consideration (the receipt of which is hereby acknowledged) I hereby assign, transfer and set over to Mary D. Wells whose p.o. address is Minneapolis, Minn., all my right, title, and interest in policy no. 465619 issued by the Mutual Benefit Life Insurance Company, of Newark, N.J., and for the consideration above expressed I do also for myself, my executors and administrators, guarantee the validity and sufficiency of the foregoing assignment to the above-named assignee, her executors, administrators or assigns, and her title to the said policy will forever warrant and defend.

In witness whereof, I have hereunto set my hand and seal, this 29th day of January, 1921.

FREDERICK B. WELLS. [SEAL]
——— ——— [SEAL]
——— ——— [SEAL]
——— ——— [SEAL]

STATE OF MINNESOTA, *County of Hennepin, ss:*

On this 29th day of January, in the year of our Lord 1921, before me, the undersigned, a notary public residing in Minneapolis, Minn., duly commissioned and thereunto authorized, came Frederick
61 B. Wells to me known and known to me to be the individual described in and who executed the foregoing assignment and acknowledged that he executed the same.

(Notary sign here.) C. W. LANE.
Notary Public, Hennepin County, Minnesota.

My commission expires June 29, 1923.

Received by the Mutual Benefit Life Ins. Co., of Newark, N.J., Apr. 4, 1921.

J. WM. JOHNSON, *Sec'y.*
W.J.A.

(Original)

Assignment of policy no. 465619 on the life of Frederick B. Wells in the Mutual Benefit Life Insurance Company, of Newark, New Jersey

I, Mary Drew Wells, the beneficiary and absolute owner of the above described policy of insurance, do hereby assign said policy to Minneapolis Trust Company, trustee, of Minneapolis, in the State of Minnesota.

Witness my hand and seal at Minneapolis, in the State of Minnesota, this first day of May 1923.

MARY DREW WELLS. [L.S.]
——— ——— [L.S.]

Signed in the presence of—
EDITH A. LOUCKS.
EVA J. PATTERSON.

I, Frederick B. Wells, the insured under the above-described policy of insurance, hereby acknowledge that I have previously assigned to Mary Drew Wells all my right, title, and interest in and to said policy, that I have no right to object to the above assignment nor wish to do so.

Witness my hand and seal at Minneapolis, in the State of Minnesota, this twenty-fifth day of June 1933.

FREDERICK B. WELLS. [L.S.]
——— ——— [L.S.]

Signed in the presence of—
BLANCHE LOVE.
W. F. GENELL.

62 Received by the Mutual Benefit Life Ins. Co., of Newark, N.J., Jul. 3, 1923.

J. WM. JOHNSON, *Sec'y.*
W.J.A.

No. 438777

Organized 1845

Insured. The Mutual Benefit Life Insurance Company, of Newark, New Jersey, in consideration of the payment of premiums as hereinafter provided, hereby insures the life Frederick B. Wells, of Minneapolis, in the county of Hennepin, State of Minnesota (herein called the insured)

Amount. in the sum of four thousand five hundred and ninety-seven dollars, for the term of life, payable at its office

When, where, and to whom payable. in Newark, New Jersey, to Mary D. Wells, his wife if living, otherwise to the executors, administrators, or assigns of the insured, immediately upon receipt of due proof of the death of the insured. Any error made in stating the age of the insured will be adjusted by paying such amount as the premiums paid would purchase at the correct age. Any indebtedness to the company on this policy and any unpaid instalments of the then current year's premium will be deducted from the sum insured.

Premiums. The annual premium of one hundred and fourteen dollars and nineteen cents will be payable by the insured on delivery hereof and on the twenty-seventh day of September in each year during the continuance of this policy, at the company's office in Newark, New Jersey, or to agents in exchange for receipts signed by the president or treasurer. In lieu of the annual premium the company will accept fifty-eight dollars and twenty-four cents semiannually in advance, or twenty-nine dollars and seventy cents quarter annually in advance. This policy will not take effect unless the first premium or agreed instalment thereof shall be actually paid during the lifetime of the insured.

63 Assignment. No assignment of this policy shall affect the company until it shall have received written notice thereof. This policy is issued in lieu of an instalment bond bearing the same number dated 27 September, 1906, for $6,000 for the purpose of changing the plan.

Agents. Agents are not authorized to make, alter, or discharge contracts.

Incontestability. If within one year the insured shall commit suicide, while sane or insane, this policy will be null and void. This policy will be incontestable ~~after one year from its date of issue~~ except for non-payment of premium.

The provisions and agreements printed on the second and third pages hereof are a part of this contract. As to non-forfeiture provisions and dividends this policy will be treated as if dated and issued on 27 September, 1906.

In witness whereof, the Mutual Benefit Life Insurance Company has, by its president and secretary, signed this contract at the city of Newark, in the State of New Jersey, this Seventeenth day of October one thousand nine hundred and eleven.

Eight words erased before execution.

Examined.

D.

Age 33 in 1906.

FRED FRELINGHUYSEN,
President.

J. WM. JOHNSON,
Secretary.

Attest:

LEWIS A. MORNINGSTON, *Registrar.*

Whole life policy. Premiums payable for life. Dividends annually beginning with 2d policy year as provided herein.

* * * * * * *

Special privileges

If not assigned, this policy may be returned to the company at its office in Newark, New Jersey, with the insured's written request for the appropriate indorsement of the policy by the company:

64 1. To have the beneficiary changed. This change may be made at any time and from time to time while the policy is in force, or within one month from default in premium payments.

* * * * * * *

(In all other respects policy no. 438577 is substantially similar to policy no. 937864 above. Application of the insured for policy no. 438577 is omitted as immaterial.)

SEPTEMBER 27TH, 1911.

In consideration of the payment of $228.72 for adjustment of premiums, the Mutual Benefit Life Insurance Company is hereby requested to reissue instalment bond #438577 on the life of Frederick B. Wells, on the policy form now in use by the company, changed from the 20 payment life continuous instalment bond plan for $6,000, to the ordinary life plan for $4,597.00, as of original date, Sept. 27th, 1906. From the credit of $228.72 on account of the change, deduct $48.29, the cash due to renew the changed policy for September 1911, leaving $180.43 to be paid in cash by the company, receipt of which is hereby acknowledged.

FREDERICK B. WELLS.
MARY D. WELL.

Request for change of beneficiary

MINNEAPOLIS, MINN., *May 7, 1910.*

I, the party insured under policy no. 438577 in the Mutual Benefit Life Insurance Company, hereby request the company to change the beneficiary under said policy from estate to Mary Drew Wells my wife,[5] alternatively

F. B. WELLS.

Request for change of beneficiary

MINNEAPOLIS, MINN., *Jan. 15, 1907.*

I, the party insured under policy no. 438577 in the Mutual Benefit Life Insurance Company, hereby request the company to change the beneficiary under said policy from Anne Jonas Wells to my sister,[6] to my estate.

FREDERICK B. WELLS.

65 (Original)

Assignment of policy no. 438577 on the life of Frederick B. Wells in the Mutual Benefit Life Insurance Company, Newark, New Jersey

I, Mary Drew Wells, the beneficiary and absolute owner of the above-described policy of insurance, do hereby assign said policy to Minneapolis Trust Company, trustee, of Minneapolis, in the State of Minnesota.

Witness my hand and seal at Minneapolis, in the State of Minnesota, this first day of May 1923.

MARY DREW WELLS. [L.S.]
——— ——— [L.S.]

Signed in the presence of—
EDITH A. LOUCKS.
EVA J. PATTERSON.

[5] Insert the word "absolutely," or "alternatively," if new beneficiary is to be other than the insured.
[6] Insert the word "absolutely" or "alternatively" if new beneficiary is to be other than the insured.

I, Frederick B. Wells, the insured under the above-described policy of insurance, hereby acknowledge that I have previously assigned to Mary Drew Wells all my right, title, and interest in and to said policy, that I have no right to object to the above assignment nor wish to do so.

Witness my hand and seal at Minneapolis, in the State of Minnesota, this twenty-fifth day of June 1923.

FREDERICK B. WELLS. [L.S.]
——— ——— [L.S.]

Signed in the presence of—
BLANCHE LOVE.
W. F. GENELL.

Received by the Mutual Benefit Life Ins. Co., of Newark, N.J., Jul. 3, 1923.

J. WM. JOHNSON, *Sec'y.*
W.J.A.

66 *Assignment*

Original.

For one dollar, to me in hand paid, and for other valuable considerations (the receipt of which is hereby acknowledged) I hereby assign, transfer, and set over to Mary D. Wells, whose p.o. address is, Minneapolis, Minnesota, all my right, title and interest in policy no. 438577 issued by the Mutual Benefit Life Insurance Company, of Newark, N.J., and for the consideration above expressed I do also for myself, my executors, and administrators, guarantee the validity and sufficiency of the foregoing assignment to the above-named assignee, her executors, administrators or assigns, and her title to the said policy will forever warrant and defend.

In witness whereof, I have hereunto set my hand and seal this 31st day of January 1921.

FREDERICK B. WELLS. [SEAL.]

STATE OF MINNESOTA, COUNTY OF HENNEPIN:

On this 31st day of January, in the year of our Lord 1921, before me, the undersigned, a notary public residing in Minneapolis, Minn., duly commissioned and thereunto authorized, came Frederick B. Wells to me known and known to me to be the individual described in and who executed the foregoing assignment, and acknowledged that he executed the same.

C. W. LANE,
Notary Public, Hennepin County, Minnesota.

My commission expires,
My commission expires June 29, 1923.

Received by the Mutual Benefit Life Ins. Co., of Newark, N.J., Apr. 4, 1921.

J. WM. JOHNSON, *Sec'y.*
W.J.A.

67 Organized in 1845

The Mutual Benefit Life Insurance Co., of Newark, N.J. Frederick Frelinghuysen, president. George T. Blandford, general agent, 1234 McKnight Building

MINNEAPOLIS, MINN., *April 6th, 1921.*

MR. FRED'K B. WELLS,
Vice Pres. F. H. Peavey Co., 312 Chamber of Commerce.

DEAR MR. WELLS: We return herewith original assignments (3) of policies nos. 333420, 438577 and 465619, Wells, to Mary D. Wells, dated Jan. 29th, 1921, Jan. 31st, 1921, and Jan. 29th, 1921, respectively, with the company's acknowledgment thereon, duplicates having been previously placed on the company's files.

Yours very truly,

GEO. T. BLANDFORD,
General Agent.

MA.

No. 1417156

Age 47

The Northwestern Mutual Life Insurance Company in consideration of the payment of four thousand and ninety-two dollars, the receipt whereof is hereby acknowledged, and of the annual payment of a like sum to the said company, on or before the 5th day of May in every year during the life time of Frederick B. Wells, of Minneapolis, Minnesota (hereinafter called the insured) promises, upon receipt of due proof of the death of the insured, to pay at its home office unto his wife, Mary D. Wells, beneficiary, the sum of one hundred thousand dollars, less any unpaid premium or premiums for the then current policy year and any other indebtedness to the company on account of this policy.

Subject to the rights of any assignee, the insured (1) may
68 designate one or more beneficiaries if none be named herein, either with or without reservation of the right to revoke such designation; and (2) may designate one or more contingent beneficiaries whose interest shall be as expressed in, or by endorsement of the company on, this policy; and (3) may change any beneficiary not irrevocably designated; and (4) may change any contingent beneficiary. If there be more than one beneficiary the interest of any deceased beneficiary shall pass to the survivor or survivors unless otherwise directed by the insured. If no beneficiary or contingent beneficiary survive the insured the proceeds of this policy shall be payable to the executors, administrators, or assigns of the insured. No such designation, revocation, change or direction shall be effective unless duly made in writing and filed at the home office of the company (accompanied by this policy for suitable endorsement) prior to or at the time this policy shall become payable.

No assignment of this policy shall be binding upon the company until it be filed with the company at its home office. The company

assumes no responsibility as to the validity or effect of any assignment. Satisfactory proof of assignee's interest must be produced on making claim.

This policy is issued and accepted by the parties in interest subject to the provisions stated on the second and third pages hereof which are a part of this contract.

In witness whereof, the Northwestern Mutual Life Insurance Company, of Milwaukee, Wisconsin, has by its president and secretary, executed this contract, this fifth day of May, one thousand nine hundred and twenty.

W. D. VAN DYKE, *President.*
A. C. HATHAWAY, *Secretary.*

Whole-life policy.
Premiums payable for life.
Dividends payable annually.
Y. 1.

Provisions

(Policy no. 1417156 contains standard provisions including nonforfeiture provisions, provisions for surrender and for loans on security of the policy, together with a table showing loan
69 and cash value, value in paid-up insurance, and period for extended term insurance for each $1,000 face value of the policy. These provisions are omitted as immaterial.)

Special provisions relating to settlement when this policy becomes payable

(Policy no. 1417156 also contains the usual special provisions relating to settlement when the policy becomes payable. These are omitted as immaterial. Under these provisions the insured (or the beneficiaries if the insured has not exercised the privilege) may direct that payment be made under various optional provisions in lieu of the stipulated lump-sum payment. Tables are included showing amounts payable under the various optional provisions.)

(Application of the insured for policy no. 1417156 is omitted as immaterial. The right to change the beneficiary was not reserved by the insured in the application for policy no. 1417156.)

Assignment

Duplicate.

For one dollar, to me in hand paid, and for other valuable considerations (the receipt of which is hereby acknowledged) I hereby assign, transfer, and set over to Mary D. Wells, whose p.o. address is Minneapolis, Minnesota, all my right, title, and interest in policy no. 1417156 issued by the Northwestern Mutual Life Insurance Company, of Milwaukee, Wis., and for the consideration above expressed I do also for myself, my executors and administrators, guarantee

the validity and sufficiency of the foregoing assignment to the above-named assignee, her executors, administrators or assigns, and her title to the said policy will forever warrant and defend.

In witness whereof I have hereunto set my hand and seal, this 29th day of January 1921.

FREDERICK B. WELLS. [SEAL.]
——— ——— [SEAL.]
——— ——— [SEAL.]
——— ——— [SEAL.]

STATE OF MINNESOTA, *County of Hennepin, ss:*

On this 29th day of January in the year of our Lord 1921, before me, the undersigned, a notary public residing in Minneapolis, Minn., duly commissioned and thereunto authorized, came Frederick
70 B. Wells, to me known and known to me to be the individual described in and who executed the foregoing assignment, and acknowledged that he executed the same.

(Notary sign here.) C. A. LANE,
Notary Public, Hennepin County, Minnesota.

My commission expires June 29, 1923.
Jul. 2, 1923.

(Original)

Assignment of policy no. 1417156 on the life of Frederick B. Wells in the Northwestern Mutual Life Insurance Company, of Milwaukee, Wisconsin

I, Mary Drew Wells, the beneficiary and absolute owner of the above-described policy of insurance, do hereby assign said policy to Minneapolis Trust Company, trustee, of Minneapolis, in the State of Minnesota.

Witness my hand and seal at Minneapolis, in the State of Minnesota, this first day of May 1923.

MARY DREW WELLS. [L.S.]
——— ——— [L.S.]

Signed in the presence of—
EDITH A. CONNER.
EVA J. PATTERSON.

I, Frederick B. Wells, the insured under the above-described policy of insurance, hereby acknowledge that I have previously assigned to Mary Drew Wells all my right, title, and interest in and to said policy, that I have no right to object to the above assignment nor wish to do so.

Witness my hand and seal at Minneapolis, in the State of Minnesota, this twenty-fifth day of June, 1923.

FREDERICK B. WELLS. [L.S.]
——— ——— [L.S.]

Signed in the presence of—
BLANCHE LANE.
W. T. GERRELL.

71 *No. 1427675*

Age 47

The Northwestern Mutual Life Insurance Company, in consideration of the payment of two hundred four and 60/100 dollars, the receipt whereof is hereby acknowledged, and of the annual payment of a like sum to the said company, on or before the 1st day of June in every year during the lifetime of Frederick B. Wells, of Minneapolis, Minnesota (hereinafter called the insured), promises, upon receipt of due proof of the death of the insured, to pay at its home office unto his wife, Mary D. Wells, beneficiary, the sum of five thousand dollars, less any unpaid premium or premiums for the then current policy year and any other indebtedness to the company on account of this policy.

Subject to the rights of any assignee, the insured (1) may designate one or more beneficiaries if none be named herein, either with or without reservation of the right to revoke such designation, and (2) may designate one or more contingent beneficiaries whose interest shall be as expressed in, or by endorsement of the company on, this policy; and (3) may change any beneficiary not irrevocably designated; and (4) may change any contingent beneficiary. If there be more than one beneficiary the interest of any deceased beneficiary shall pass to the survivor or survivors unless otherwise directed by the insured. If no beneficiary or contingent beneficiary survive the insured the proceeds of this policy shall be payable to the executors, administrators, or assigns of the insured. No such designation, revocation, change or direction shall be effective unless duly made in writing and filed at the home office of the company (accompanied by this policy for suitable endorsement) prior to or at the time this policy shall become payable.

No assignment of this policy shall be binding upon the company until it be filed with the company at its home office. The company assumes no responsibility as to the validity or effect of any assignment. Satisfactory proof of assignee's interest must be produced on making claim.

This policy is issued and accepted by the parties in interest subject to the provisions stated on the second and third pages hereof, which are a part of this contract.

72 In witness whereof, the Northwestern Mutual Life Insurance Company, of Wilwaukee, Wisconsin, has by its president and secretary, executed this contract, this first day of June, one thousand nine hundred and twenty.

W. D. VAN DYKE, *President.*
A. S. HATHAWAY, *Secretary.*

Whole life policy.
Premiums payable for life.
Dividends payable annually.
Y. 1.

Provisions

(Policy no. 1427675 contains the usual standard provisions omitted here as immaterial, providing, among other things, for the usual thirty days of grace in which to pay premiums, reinstatement following default in premium payments, and optional methods of receiving or applying dividends declared by the company upon such policy. The policy also contains the usual standard nonforfeiture, surrender and loan provisions, together with a table showing nonforfeiture and loan values.)

Special provisions relating to settlement when this policy becomes payable

(In addition to the provision for lump-sum payment of the face amount of the policy at maturity, policy no. 1427675 contains the usual standard option provisions for payment in lieu of a lump-sum payment and contains tables showing amounts of installments under the various installment option provisions.)

(Application of the insured for policy no. 1427675 is omitted as immaterial. The right to change the beneficiary was not reserved in the application for policy no. 1427675.)

(Duplicate)

Assignment

For one dollar, to me in hand paid, and for other valuable considerations (the receipt of which is hereby acknowledged) I hereby assign, transfer, and set over to Mary D. Wells, whose p.o. address is Minneapolis, Minnesota, all my right, title, and interest in
73 policy no. 1427675 issued by the Northwestern Mutual Life Insurance Company, of Milwaukee, Wis., and for the consideration above expressed I do also, for myself, my executors, and administrators, guarantee the validity and sufficiency of the foregoing assignment to the above-named assignee, her executors, administrators or assigns, and her title to the said policy will forever warrant and defend.

In witness whereof I have hereunto set my hand and seal, this 29th day of January 1921.

FREDERICK B. WELLS. [SEAL]
——— ———. [SEAL]
——— ———. [SEAL]
——— ———. [SEAL]

STATE OF MINNESOTA,
County of Hennepin, ss:

On this 29th day of January in the year of our Lord 1921, before me the undersigned a notary public residing in Minneapolis, Minn.,

duly commissioned and thereunto authorized, came Frederick B. Wells to me known and known to me to be the individual described in and who executed the foregoing assignment, and acknowledged that he executed the same.

(Notary sign here.) C. A. LANE,
Notary Public, Hennepin County, Minnesota.

My commission expires June 29, 1923.
Jul. 2, 1923.

(Original)

Assignment of policy no. 1427675 on the life of Frederick B. Wells in the Northwestern Mutual Life Insurance Company, of Milwaukee, Wisconsin

I, Mary Drew Wells, the beneficiary and absolute owner of the above-described policy of insurance, do hereby assign said policy to Minneapolis Trust Company, trustee, of Minneapolis, in the State of Minnesota.

74 Witness my hand and seal at Minneapolis, in the State of Minnesota, this first day of May 1923.

MARY DREW WELLS. [L.S.]
[L.S.]

Signed in the presence of—
EDITH A. CONNER.
EVA J. PATTERSON.

I, Frederick B. Wells, the insured under the above-described policy of insurance, hereby acknowledge that I have previously assigned to Mary Drew Wells all my right, title, and interest in and to said policy, that I have no right to object to the above assignment nor wish to do so.

Witness my hand and seal at Minneapolis, in the State of Minnesota, this twenty-fifth day of June 1923.

FREDERICK B. WELLS. [L.S.]
——— ———. [L.S.]

Signed in the presence of—
BLANCHE LANE.
W. T. GERRELL.

No. 906945

Age 39

The Northwestern Mutual Life Insurance Company, in consideration of the payment of three hundred five and 20/100 dollars, the receipt whereof is hereby acknowledged, and of the annual payment of a like sum to the said company, on or before the 20th day of June in every year during the lifetime of Frederick B. Wells of Minneapolis, Minnesota (hereinafter called the insured), promises, upon receipt of due proof of the death of the insured, to pay at its home

office unto his wife, Mary D. Wells, beneficiary, subject to the right of the insured to change such beneficiary the sum of ten thousand dollars, less any unpaid premium or premiums for the then current policy year and any other indebtedness on account of this policy; provided, however, that if there be no beneficiary or contingent beneficiary surviving the insured, such payment unless otherwise directed by the insured and endorsed by the company on this policy shall be made to the executors, administrators, or assigns of the said insured.

75 Subject to the rights of any assignee and with or without reserving the right of revocation, the insured (1) may designate a beneficiary or beneficiaries if none be named in this policy, or in the event of the death of any person designated; (2) and may designate a contingent beneficiary or beneficiaries whose interest shall be as expressed in, or by endorsement of the company on, this policy; (3) and may change any beneficiary or contingent beneficiary not irrevocably designated. If there be more than one beneficiary, the interest of any deceased beneficiary shall pass to the survivor or survivors unless otherwise directed by the insured and endorsed by the company on this policy. No designation, direction, revocation, or change shall be effective unless duly made in writing and filed at the home office of the company (accompanied by the policy for suitable endorsement) prior to or at the time this policy shall become payable.

No assignment of this policy shall be binding on the company until it be filed with the company at its home office. The company assumes no responsibility as to the validity of any assignment, and satisfactory proof of assignee's interest must be produced on making claim.

This policy is issued and accepted by the parties in interest subject to the provisions stated on the second and third pages hereof, which are a part of this contract.

In witness whereof, the Northwestern Mutual Life Insurance Company, of Milwaukee, Wisconsin, has, by its president and secretary, executed this contract, this twentieth day of December, one thousand nine hundred and eleven.

GEO. C. MARKHAM, *President.*
A. S. HATHAWAY, *Secretary.*

Whole life policy.
Premiums payable for life.
Dividends payable annually.
V. 1.

Short-term insurance

This policy is dated Dec. 20, 1911, but the period from that date to June 20, 1912, is covered only by term insurance as requested by the insured; the date of issue, however, shall be considered June 20, 1912, as to all provisions of the policy, except those relating to

"suicide" and "incontestability" which are effective from the date of the policy. The receipt of $48.60 for 6 months term insurance, as aforesaid, is hereby acknowledged.

Provisions

(Policy No. 906945 contains the usual standard provisions omitted here as immaterial, providing, among other things, for the usual thirty days of grace in which to pay premiums, reinstatement following default in premium payments, and optional methods of receiving or applying dividends declared by the company upon
76 such policy. The policy also contains the usual standard nonforfeiture, surrender, and loan provisions, together with a table showing nonforfeiture and loan values.)

Provisions relating to settlement (in lieu of payment in lump sum) when this policy becomes payable

(In addition to the provision for lump-sum payment of the face amount of the policy at maturity, policy no. 906945 contains the usual standard option provisions for payment in lieu of a lump-sum payment and contains tables showing amounts of installments under the various installment option provisions.)

(Application of the insured for policy no. 906945 is omitted here as immaterial.)

Duplicate

Assignment

For one dollar, to me in hand paid, and for other valuable considerations (the receipt of which is hereby acknowledged), I hereby assign, transfer, and set over to Mary D. Wells, whose p.o. address is Minneapolis, Minnesota, all my right, title, and interest in policy no. 906945 issued by the Northwestern Mutual Life Insurance Company, of Milwaukee, Wis., and for the consideration above expressed I do also for myself, my executors, and administrators, guarantee the validity and sufficiency of the foregoing assignment to the above-named assignee, her executors, administrators, or assigns, and her title to the said policy will forever warrant and defend.

In witness whereof, I have hereunto set my hand and seal this 29th day of January 1921.

FREDERICK B. WELLS. [SEAL.]
——— ———. [SEAL]
——— ———. [SEAL]
——— ———. [SEAL]

STATE OF MINNESOTA, *County of Hennepin, ss:*

On this 29th day of January in the year of our Lord 1921, before me, the undersigned, a notary public residing in Minneapolis,

Minn., duly commissioned and thereunto authorized, came Frederick B. Wells to me known and known to me to be
77 the individual described in and who executed the foregoing assignment, and acknowledged that he executed the same.

(Notary sign here.) C. A. LANE,
Notary Public, Hennepin County, Minnesota.

My commission expires June 29, 1923.
Jul. 2, 1923.

(Original)

Assignment of policy no. 906945 on the life of Frederick B. Wells in the Northwestern Mutual Life Insurance Company of Milwaukee, Wisconsin

I, Mary Drew Wells, the beneficiary and absolute owner of the above-described policy of insurance, do hereby assign said policy to Minneapolis Trust Company, trustee, of Minneapolis, in the State of Minnesota.

Witness my hand and seal at Minneapolis, in the State of Minnesota, this first day of May 1923.

MARY DREW WELLS. [L.S.]
——— ——— [L.S.]

Signed in the presence of—
EDITH A. CONNER.
EVA J. PATTERSON.

I, Frederick B. Wells, the insured under the above-described policy of insurance, hereby acknowledge that I have previously assigned to Mary Drew Wells all my right, title, and interest in and to said policy, that I have no right to object to the above assignment, nor wish to do so.

Witness my hand and seal at Minneapolis, in the State of Minnesota, this twenty-fifth day of June 1923.

FREDERICK B. WELLS. [L.S.]
——— ——— [L.S.]

Signed in the presence of—
BLANCHE LANE.
W. F. GERRELL.

78 *Number 07986 B.Ex.*

Amount, $5,000. Age, 34. Annual premium, $134.00

State Mutual Life Assurance Company, of Worcester, Massachusetts, incorporated 1844, in consideration of the representations and agreements made in the written and printed application of the insured, which is made a part of this contract, a full copy of which application is hereunto annexed, and in further consideration of the

payment, in advance, of the annual premium of one hundred and thirty-four dollars, and of the payment of a like sum on or before the twentieth day of May, 1907, and in each year thereafter during the continuance of this policy, does insure the life of Frederick Brown Wells, of Minneapolis, county of Hennepin and State of Minnesota, herein called the insured, in the amount of five thousand dollars, and promises to pay, at its home office in Worcester, said amount to Mary D. Wells, wife of the insured, if then living, otherwise to the executors, administrators, or assigns of the insured, upon satisfactory proof of the death of the said insured, the unpaid premiums, if any, for the balance of the policy year then entered upon, and any other indebtedness on account of this policy being first deducted therefrom.

This policy is issued and accepted subject to the benefits, privileges, and conditions specified on the second page hereof, which are hereby made a part of this contract.

This policy shall be incontestable after two years from the date of its issue, provided the premiums shall be paid as agreed and the agreement as to military and naval service is not violated.

79 In witness whereof, the said company has, by its president, vice president, and secretary, executed this contract at Worcester, Massachusetts, this eleventh day of November one thousand nine hundred and eleven.

B. W. WRIGHT, *President.*
A. G. BULLOCH, *Vice President.*
D. W. CARTER, *Secretary.*

Whole life policy.

Premiums payable for life. Dividends payable annually, beginning at end of first policy year.

(Policy no. 67986 B.Ex. was issued in exchange for a similar policy no. 67986 B. of equal face amount. Application for exchange is omitted as immaterial.)

Benefits, privileges, and conditions referred to herein and made a part of this contract.

(Policy no. 67986 B.Ex. contains the usual standard provisions providing for installment benefits, together with tables of installment values, standard provisions relating to additional dates of claims for payment of premiums, reinstatement upon default in payment of premiums, assignment and loan cash surrender provisions, together with a table of paid-up insurance, extended insurance, and cash surrender values.)

(Neither policy no. 67986 B.Ex. nor the application therefor contain any specific provision reserving to the insured the right to change the beneficiary named in such policy.)

(Application of the insured for policy no. 67986 B.Ex. is omitted as immaterial.)

(Original)

State Mutual Life Assurance Company, of Worcester, Mass.

Absolute assignment of policy

For value received, we do hereby assign, transfer, and set over, absolutely, unto Mary D. Wells, of Minneapolis, in the State of Minnesota, all our right, title, and interest in and to the policy
80 of life assurance issued by the State Mutual Life Assurance Company, of Worcester, Mass., upon the life of Frederick B. Wells, of Minneapolis, in the State of Minnesota, for the sum of five thousand no hundred dollars, and numbered 67986 B.Ex., with absolutely all privilege, benefit, and advantage secured thereby, or to be had or derived therefrom, and subject to all the conditions therein contained; hereby giving the said Mary D. Wells full power and authority to collect the proceeds thereof at maturity or to surrender the same for its cash value; and to give her receipt therefor, which receipt we expressly agree shall be binding upon us, our heirs, executors, administrators, and assigns. It is understood and agreed, however, that any distribution of surplus may be applied to any payment of premiums on this policy, and that the said company shall be discharged from any further liability to either the insured, or assignee, for surplus so applied.

It is hereby declared that no proceedings in bankruptcy are pending against the maker or makers of this assignment.

If it should appear that this assignment is made upon any trust, the company shall not be liable to see to the application of any payment hereunder, and may rely upon the sole signature of the assignee to any receipt, release, or waiver, or to any transfer or other instrument to whomsoever made purporting to effect this assignment or any rights thereunder.

In witness whereof we hereunto set our hands and seals this twenty-fifth day of October A. D. 1921.

FREDERICK B. WELLS. [L.S.]
MARY D. WELLS. [L.S.]

Witness:
NORMA E. DART.
H. R. GOLDING.

STATE OF MINNESOTA, *County of Hennepin*, *ss:*

On this twenty-fifth day of October, A.D. 1921, before me personally came Frederick B. Wells and Mary D. Wells to me known, and known to me to be the individuals described in, and who executed the foregoing assignment, and acknowledged the same to be their free act and deed and made oath to their full age.

W. F. GRENELL.
Notary Public, Hennepin County, Minn.
My commission expires Oct. 26, 1927.

81 Received and duplicate filed at the home office of the company at Worcester, this 29th day of October 1921, assuming no responsibility, however, as to its validity.

STATE MUTUAL LIFE ASSURANCE COMPANY,
By W. F. MITCHELL, *Asst. Secretary.*

NOTICE.—The rules of the company require that assignments of policies issued by it shall be made in duplicate; that both copies shall be sent to the home office, the duplicate to be there retained and the original returned.

The interest of a minor cannot be assigned except by a daily appointed guardian, and a certificate showing appointment must be filed with the company.

(Original)

State Mutual Life Assurance Company of Worcester, Massachusetts

Discharge of assignment

Having received full satisfaction for the indebtedness secured by the assignment of policy no. 67986 B.Ex. on the life of Frederick B. Wells, I do hereby relinquish all my rights, title, interest, and claim in and to said policy and discharge said assignment.

Witness my hand and seal this 14th day of Feb., A.D. 1924.

Witness:

ROY A. LATHROP.

_____ _____.

MARY D. WELLS. [L.S.]
By F. B. WELLS. [L.S.]
Atty. in fact.
_____ _____. [L.S.]

STATE OF MINNESOTA, *County of Hennepin, ss:*

On this 14th day of Feb., A.D. 1924, before me personally came F. B. Wells, attorney in fact for Mary D. Wells to me known,
82 and known to me to be the individual described in, and who executed the foregoing discharge, and acknowledged the same to be his free act and deed.

ROY A. LATHROP, *Notary Public.*

Received and recorded the above discharge at the office of the company Mar. 26, 1924.

By W. F. MITCHELL,
Asst. Secretary.

(Original)

State Mutual Life Assurance Company of Worcester, Mass.

Absolute assignment of policy

For value received, we do hereby assign, transfer, and set over, absolutely, unto Minneapolis Trust Co., as trustee of Minneapolis

in the State of Minnesota, all our right, title, and interest in and to the policy of life assurance issued by the State Mutual Life Assurance Company of Worcester, Mass., upon the life of Frederick B. Wells, of Minneapolis, in the State of Minnesota, for the sum of five thousand no hundred dollars, and numbered 67986 B.Ex., with absolutely all privilege, benefit, and advantage secured thereby, or to be had or derived therefrom, and subject to all the conditions therein contained; thereby giving the said Minneapolis Trust Co., trustee, full power and authority to collect the proceeds thereof at maturity or to surrender the same for its cash value; and to give their receipt therefor, which receipt we expressly agree shall be binding upon our heirs, executors, administrators, and assigns. It is understood and agreed, however, that any distribution of surplus may be applied to any payment of premiums on this policy, and that the said company shall be discharged from any further liability to either the insured, or assignee, for surplus so applied.

It is hereby declared that no proceedings in bankruptcy are pending against the maker or makers of this assignment.

If it should appear that this assignment is made upon any trust, the company shall not be liable to see to the application of any payment hereunder, and may rely upon the sole signature of the assignee to any receipt, release, or waiver, or to any transfer or other instrument to whomsoever made purporting to effect this assignment or any rights thereunder.

83 In witness whereof we hereunto set our hands and seals, this 14th day of Feb., A.D. 1924.

FREDERICK B. WELLS. [L.S.]
MARY D. WELLS. [L.S.]
By F. B. WELLS, *Atty.* [L.S.]

Witness:
ROY A. LATHROP.

STATE OF MINNESOTA, *County of Hennepin, ss:*

On this 14th day of Feb., A.D. 1924, before me personally came Frederick B. Wells to me known, and known to me to be the individual described in, and who executed the foregoing assignment, and acknowledged the same to be his free act and deed and made oath to this full age.

ROY A. LATHROP, *Notary Public.*

Received and duplicate filed at the home office of the company at Worcester, this ——— day of Mar. 26, 1924, 191 , assuming no responsibility, however, as to its validity.

STATE MUTUAL LIFE ASSURANCE COMPANY,
By W. F. MITCHELL, *Asst. Secretary.*

NOTICE.—The rules of the company require that assignments of policies issued by it shall be made in duplicate; that both copies

shall be sent to the home office, the duplicate to be there retained and the original returned.

The interest of a minor cannot be assigned except by a duly appointed guardian, and a certificate showing appointment must be filed with the company.

The company's name was changed on December 29th, 1922, to Provident Mutual Life Insurance Company of Philadelphia.

No. 181485

Life policy payable at death, continuous yearly premiums, yearly cash dividend

Age, 39.

The Provident Life and Trust Company of Philadelphia, in consideration of the representations made in the application for
84 this policy, which are hereby made a part of this contract, and of the payment of one hundred and forty-six 00/100 dollars, receipt of which is hereby acknowledged, and payment of the yearly premium of one hundred and forty-six 00/100 dollars on or before the thirtieth day of twelfth month in every year thereafter during the continuance of this policy, does insure the life of Frederick Brown Wells, of Minneapolis, Hennepin County, Minnesota, herein called the insured, in the amount of five thousand dollars for the term of his natural life, and upon receipt of due written proof of the death of the insured during the continuance of this policy promises to pay at its office in the city of Philadelphia the amount of said insurance less any indebtedness hereon to the company and any unpaid portion of the premium for the then current policy year, to his wife, Mary Drew Wells, if living; otherwise to his executors, administrators or assigns, with ——— right reserved to the insured to change the beneficiary.

Provisions

Change of beneficiary. If the right to change the beneficiary has been reserved to the insured, he or she may, if of full age, at any time during the continuance of this policy, change and successively change the beneficiary hereunder, whether original or substituted, without the consent of the beneficiary, provided that the interest of any beneficiary shall be subject to the right of any assignee of said policy. The insured may, however, declare the designation of any beneficiary to be irrevocable. During the lifetime of any irrevocably designated beneficiary the insured shall not have the right to revoke or change the designation of that beneficiary without the written consent of said beneficiary filed with the company. If any beneficiary, revocable or irrevocable, dies before the insured, the interest of such beneficiary shall vest in the insured unless otherwise specifically provided. Every change of beneficiary or change from revocable to irrevocable designation must be made by written direc-

tion of the insured and filed with the company at its home office accompanied by this policy, and will take effect only when endorsed on this policy by the company.

The beneficiary is the person named in or endorsed on this policy as the person to whom the amount insured is payable. An assignee is the person to whom this policy may have been lawfully transferred by an instrument other than a designation or change of beneficiary as aforesaid.

85 (Policy no. 181485 further contains the usual standard provisions, omitted here as immaterial, relating to incontestability after one year, payment of dividends, assignments, premiums, reinstatement, and the usual standard nonforfeiture provisions, together with tables of values in paid-up insurance, extended term insurance, and cash and loan values.)

Endorsed on the cover of policy no. 181485 is the following:

The company hereby endorses on this policy the beneficiary is revocably changed to the executors, administrators, or assigns of the insured.

Executed by Provident Mutual Life Insurance Company of Philadelphia 8 Month 31, 1923. R.S. no. 110. Countersigned (illegible) registrar, (illegible) president.

(Application of the insured for policy no. 181485 is omitted as immaterial. In the application for policy no. 181485 the insured reserved the right to change and successively change the beneficiary.)

Original

Assignment

For one dollar, to me in hand paid, and for other valuable considerations (the receipt of which is hereby acknowledged) I hereby assign, transfer, and set over to Mary Drew Wells, whose P.O. address is Minneapolis, Minnesota, all my right, title, and interest in policy no. 181485 issued by the Provident Life & Trust Company of Philadelphia, Pa., and for the consideration above expressed I do also for myself, my executors, and administrators, guarantee the validity and sufficiency of the foregoing assignment to the above-named assignee, her executors, administrators, or assigns, and her title to the said policy will forever warrant and defend.

In witness whereof, I have hereunto set my hand and seal, this 29th day of January, 1921.

Frederick Brown Wells.	[SEAL]
——— ———	[SEAL]
——— ———	[SEAL]
——— ———	[SEAL]

State of Minnesota, *County of Hennepin, ss:*

On this 29th day of January in the year of our Lord 1921,
86 before me the undersigned a notary public residing in Minne-

apolis, Minn., duly commissioned and thereunto authorized, came Frederick B. Wells to me known and known to me to be the individual described in and who executed the foregoing assignment, and acknowledged that he executed the same.

Notary sign here. C. A. LANE,
Notary Public, Hennepin County, Minnesota.

My commission expires June 29, 1923.

The Provident Life and Trust Company of Philadelphia hereby certifies that the above is a true copy of a paper the original whereof has been filed this day with the company and duly recorded, subject, nevertheless, to all the terms of the policy. The company's receipt and record of said paper shall be deemed only an acknowledgment of notice of its alleged execution and shall not be taken as an admission of the genuineness of the signature of the assignor nor the validity of the assignee's claims thereunder nor the insurable interest of the assignee.

Philadelphia, March 24, 1921.

(Illegible signature)
Registrar.

Release of an assignment

For value received, I hereby release and relinquish all my right, title, and interest in policy no. 181485, dated December 30th, 1911, issued by Provident Mutual Life Insurance Company of Philadelphia on the life of Frederick Brown Wells, transferred to Mary Drew Wells by an assignment dated January 29, 1921.

And it is hereby certified and declared that I have no further interest in said policy and that the said policy and all claims thereunder are hereby restored to the maker or makers of said assignment as of their former rights and interests as they existed at the time of making of said assignment, and such rights and interests are hereby acknowledged to have reverted to them as fully as if the above-mentioned assignment had not been made.

87 It is hereby further certified and declared that no proceedings in bankruptcy are pending against any person or party executing this release.

Witness my hand and seal, this first day of May, 1923.

(Signed) MARY DREW WELLS. [SEAL]
(Signed) ——— ——— [SEAL]
(Signed) ——— ——— [SEAL]
(Signed) ——— ——— [SEAL]

Signed, sealed, and delivered in the presence of—
Witnesses to sign on these lines.
(Signed) ZDILL A. LOUNER.
(Signed) EVA J. PATTERSON.
(Signed) ——— ———
(Signed) ——— ———

Note

The signatures must be witnessed by two disinterested subscribing witnesses, and the release of assignment must be acknowledged, using the forms of acknowledgment on back hereof, before a notary public or other officer duly qualified to take acknowledgments of deeds, and certified by him under his official seal.

No release of assignment shall be of any force or effect unless made in writing and filed with the company at its home office. The company assumes no responsibility as to the validity of any release of assignment, and the receipt and recording thereof by the company shall be deemed only an acknowledgment of notice of its alleged execution and shall not be taken as an admission of the genuineness of the signatures nor the validity of the release.

The company was founded in 1865 as the Provident Life and Trust Company of Philadelphia and its name was changed on December 29, 1922, to Provident Mutual Life Insurance Company of Philadelphia.

3216B (86A) Rev. 1–23

(Acknowledgments on reverse side.)

Individual or partnership acknowledgment

STATE OF MINNESOTA, *County of Hennepin*, ss:

On this first day of May 1923 before me, the subscriber, a resident of the State of Minnesota, residing at Minneapolis, duly qualified to take acknowledgments of deeds, personally appeared Mary
ss Drew Wells known to me to be the person who executed the within or foregoing instrument, and acknowledged the same to be her act and deed.

Witness my hand and official seal the day and year last above written.

(Signed) W. F. GRENELL,
W. F. Grenell,
Notary Public, Hennepin County, Minn.

My commission expires Oct. 26, 1927.

Certificate of record

Provident Mutual Life Insurance Company of Philadelphia hereby certifies that the within or foregoing is a true copy of a paper the original whereof has been filed this day with the company and duly recorded, subject, nevertheless, to all the terms of the policy. The company assumes no responsibility as to the validity of any release of assignment, and the receipt and recording thereof by the company shall be deemed only an acknowledgment of notice of its alleged execution and shall not be taken as an admission of the genuineness of the signatures nor the validity of the release.

(Illegible signature)
Registrar.

PHILADELPHIA, *Aug. 22, 1923.*

Assignment

For value received, I hereby transfer, assign, and set over unto Minneapolis Trust Company, trustee, of 115 South Fifth Street, Minneapolis, Minnesota ~~and~~ ——— Street and No. City or town State (if corporation strike executors, administrators and assigns, ——— out "executors, administrators" and insert "successors") all my right, title, and interest in policy no. 181485, dated December 30th, 1911, issued by Provident Mutual Life Insurance Company of Philadelphia on the life of Frederick Brown Wells, together with all rights, privileges, and benefits to be derived therefrom and from any supplementary contract for benefits in event of total and permanent disability or any other supplementary contract that may be attached thereto, hereby giving and granting unto the said assignee full power and authority to surrender said policy to the company at any time and to receive and receipt for the surrender value thereof, together with the further full power and authority to receive
89 from the company all sums whatsoever which may become payable under said policy, whether for dividends or shares or surplus, capital sum insured, or otherwise howsoever, and to receipt therefor.

This assignment is made under and subject to all advances or loans, if any, heretofore made by the company on account of said policy, together with interest thereon.

It is hereby certified and declared that no proceedings in bankruptcy are pending against any person or party executing this assignment.

Witness my hand and seal, this 25th day of June 1923.

FREDERICK B. WELLS. [SEAL]
——— ——— [SEAL]
——— ——— [SEAL]
——— ——— [SEAL]

(Witnesses to sign on these lines.)

Signed, sealed, and delivered in presence of—
BLANCHE LANE.
W. F. GRENELL.
——— ———
——— ———

Note

The signature must be witnessed by two disinterested subscribing witnesses, and the assignment must be acknowledged, using the forms of acknowledgment on back hereof, before a notary public or other officer duly qualified to take acknowledgments of deeds, and certified by him under his official seal.

No assignment shall be of any force or effect unless made in writing and filed with the company at its home office. The company assumes no responsibility as to the validity of any assignment,

and the receipt and recording thereof by the company shall be deemed only an acknowledgment of notice of its alleged execution and shall not be taken as an admission of the genuineness of the signature of the assignor nor the validity of the assignee's claims thereunder nor the insurable interest of the assignee.

The company was founded in 1865 as the Provident Life and Trust Company of Philadelphia and its name was changed on December 29, 1922, to Provident Mutual Life Insurance Company of Philadelphia.

3214A (395) Revised 1-23.

(Acknowledgments on reverse side.)

90 Individual or partnership acknowledgment

STATE OF MINNESOTA, *County of Hennepin, ss:*

On this twenty-fifth day of June, 1923, before me, the subscriber, a resident of the State of Minnesota, residing at Minneapolis, duly qualified to take acknowledgments of deeds, personally appeared Frederick B. Wells, known to me to be the person who executed the within or foregoing instrument, and acknowledged the same to be his act and deed.

Witness my hand and official seal the day and year last above written.

W. F. GRENELL,
Notary Public, Hennepin County, Minn.

My commission expires Oct. 26, 1927.

The company's name was changed on December 29th, 1922, to Provident Mutual Life Insurance Company of Philadelphia.

(Beneficiary has been changed. See endorsement.)

No. 181586

Life policy payable at death, continuous yearly premiums, yearly cash dividend

Age, 39.

The Provident Life and Trust Company of Philadelphia, in consideration of the representations made in the application for this policy, which are hereby made a part of this contract, and of the payment of two hundred and ninety-two 00/100 dollars, receipt of which is hereby acknowledged, and payment of the yearly premium of two hundred and ninety-two 00/100 dollars on or before the thirtieth day of twelfth month in every year hereafter during the continuance of this policy, does insure the life of Frederick Brown Wells, of Minneapolis, Hennepin County, Minnesota, herein called the insured, in the amount of ten thousand dollars for the term of his natural life, and upon receipt of due written proof of the death of the insured during the continuance of this policy promises to pay at its office in the city of Philadelphia, the amount of said insurance less any indebtedness hereon to the company and any

unpaid portion of the premium for the then current policy
91 year, to his wife Mary Drew Wells if living; otherwise to his executors, administrators, or assigns, with right reserved to the insured to change the beneficiary.

Provisions

Change of beneficiary. If the right to change the beneficiary has been reserved to the insured, he or she may, if of full age, at any time during the continuance of this policy, change and successively change the beneficiary hereunder, whether original or substituted, without the consent of the beneficiary, provided that the interest of any beneficiary shall be subject to the right of any assignee of said policy. The insured may, however, declare the designation of any beneficiary to be irrevocable. During the life time of any irrevocably designated beneficiary the insured shall not have the right to revoke or change the designation of that beneficiary without the written consent of said beneficiary filed with the company. If any beneficiary, revocable or irrevocable, dies before the insured, the interest of such beneficiary shall vest in the insured unless otherwise specifically provided. Every change of beneficiary or change from revocable to irrevocable designation must be made by written direction of the insured and filed with the company at its home office accompanied by this policy, and will take effect only when endorsed on this policy by the company.

The beneficiary is the person named in or endorsed on this policy as the person to whom the amount insured is payable. An assignee is the person to whom this policy may have been lawfully transferred by an instrument other than a designation or change of beneficiary as aforesaid.

(In all other respects policy no. 181486 contains the usual standard provisions, omitted here as immaterial, relating to incontestability after one year, payment of dividends, assignments, premiums, reinstatement, and the usual standard nonforfeiture provisions, together with tables of values in paid-up insurance, extended term insurance, and cash and loan values.)

Endorsed on the cover of policy no. 181486 is the following:

The company hereby endorses on this policy that the beneficiary is revocably changed to the executors, administrators, or assigns of the insured.

Executed by Provident Mutual Life Insurance Company of Philadelphia 8 month, 31, 1923. R.S.no. 110 countersigned (illegible signature) registrar (illegible signature). President.

92 (Application of the insured for policy no. 181486 is omitted as immaterial. In the application for policy no. 181486 the insured reserves the right to change and successively change the beneficiary.)

(Original)

Assignment

For one dollar, to me in hand paid, and or other valuable considerations (the receipt of which is hereby acknowledged) I hereby assign, transfer, and set over to Mary Drew Wells whose p.o. address is Minneapolis, Minn., all my right, title, and interest in policy no. 181486 issued by the Provident Life & Trust Company of Philadelphia, Pa., and for the consideration above expressed I do also for myself, my executors, and administrators, guarantee the validity and sufficiency of the foregoing assignment to the above-named assignee, her executors, administrators, or assigns, and her title to the said policy will forever warrant and defend.

In witness whereof I have hereunto set my hand and seal, this 29th day of January 1921.

FREDERICK BROWN WELLS. [SEAL]
——— ——— [SEAL]
——— ——— [SEAL]
——— ——— [SEAL]

STATE OF MINNESOTA,
County of Hennepin, ss:

On this 29th day of January in the year of our Lord 1921, before me, the undersigned, a notary public residing in Minneapolis, Minn., duly commissioned and thereunto authorized, came Frederick B. Wells to me known and known to me to be the individual described in and who executed the foregoing assignment, and acknowledged that he executed the same.

(Notary sign here.) C. A. LANE,
Notary Public, Hennepin County, Minnesota.

My commission expires June 29, 1923.

The Provident Life and Trust Company of Philadelphia hereby certifies that the above is a true copy of a paper the original whereof has been filed this day with the company and duly recorded, subject, nevertheless, to all the terms of the policy. The company's receipt and record of said paper shall be deemed only an acknowledgment of notice of its alleged execution and shall not be taken as an
93 admission of the genuineness of the signature of the assignor nor the validity of the assignee's claims thereunder nor the insurable interest of the assignee.

Philadelphia, March 24, 1921.

(Signature illegible),
Registrar.

Release of an assignment

For value received, I hereby release and relinquish all my right, title, and interest in policy no. 181486, dated December 30th, 1911,

issued by Provident Mutual Life Insurance Company of Philadelphia on the life of Frederick Brown Wells, transferred to Mary Drew Wells by an assignment dated January 29th, 1921.

And it is hereby certified and declared that I have no further interest in said policy and that the said policy and all claims thereunder are hereby restored to the maker or makers of said assignment as of their former rights and interests as they existed at the time of making of said assignment, and such rights and interests are hereby acknowledged to have reverted to them as fully as if the above mentioned assignment had not been made.

It is hereby further certified and declared that no proceedings in bankruptcy are pending against any person or party executing this release.

Witness my hand and seal, this first day of May 1923.

(Signed) MARY DREW WELLS [Seal]
(Signed) ——— ——— [Seal]
(Signed) ——— ——— [Seal]
(Signed) ——— ——— [Seal]

(Witness to sign on these lines.)

Signed, sealed, and delivered in the presence of—

(Signed) ZDILL A. LOUNER
(Signed) EVA J. PATTERSON
(Signed) ——— ———
(Signed) ——— ———

The signatures must be witnessed by two disinterested subscribing witnesses, and the release of assignment must be acknowledged, using the forms of acknowledgment on back hereof, before a notary public or other officer duly qualified to take acknowledgments of deeds, and certified by him under his official seal.

94 No release of assignment shall be of any force or effect unless made in writing and filed with the company at its home office. The company assumes no responsibility as to the validity of any release of assignment, and the receipt and recording thereof by the company shall be deemed only an acknowledgment of notice of its alleged execution and shall not be taken as an admission of the genuineness of the signatures nor the validity of the release.

The company was founded in 1865 as the Provident Life and Trust Company of Philadelphia and its name was changed on December 29, 1922 to Provident Mutual Life Insurance Company of Philadelphia.

3216B (86A) Rev. 1-23

(Acknowledgments on reverse side.)

Individual or partnership acknowledgment

STATE OF MINNESOTA,
County of Hennepin, ss:

On this first day of May 1923 before me, the subscriber, a resident of the State of Minnesota, residing at Minneapolis, duly qualified

to take acknowledgments of deeds, personally appeared Mary Drew Wells known to me to be the person who executed the within or foregoing instrument, and acknowledged the same to be her act and deed.

Witness my hand and official seal the day and year last above written.

(Signed) W. F. GRENELL,
W. F. GRENELL,
Notary Public, Hennepin County, Minn.

My commission expires Oct. 26, 1927.

Certificate of record

Provident Mutual Life Insurance Company of Philadelphia hereby certifies that the within or foregoing is a true copy of a paper the original whereof has been filed this day with the company and duly recorded, subject, nevertheless, to all the terms of the policy. The company assumes no responsibility as to the validity of any release of assignment, and the receipt and recording thereof by the company shall be deemed only an acknowledgment of notice of its alleged execution and shall not be taken as an admission of the genuineness of the signatures nor the validity of the release.

Philadelphia Aug. 22, 1923.

(Signature illegible),
Registrar.

95 *Assignment*

For value received, I hereby transfer, assign, and set over unto Minneapolis Trust Company, trustee, 8/6/23 of 115 South Fifth
Street and No.
Street, Minneapolis, Minnesota ~~and~~ executors, administrators, and
City or town State
assigns (if corporation strike out "executors, administrators" and insert "successors" all my right, title, and interest in policy no. 181486, dated December 30th, 1911, issued by Provident Mutual Life Insurance Company of Philadelphia on the life of Frederick Brown Wells, together with all rights, privileges, and benefits to be derived therefrom and from any supplementary contract for benefits in event of total and permanent disability or any other supplementary contract that may be attached thereto, hereby giving and granting unto the said assignee full power and authority to surrender said policy to the company at any time and to receive and receipt for the surrender value thereof, together with the further full power and authority to receive from the company all sums whatsoever which may become payable under said policy, whether for dividends or shares of surplus, capital sum insured, or otherwise howsoever, and to receipt therefor.

This assignment is made under and subject to all advances or loans, if any, heretofore made by the company on account of said policy, together with interest thereon.

It is hereby certified and declared that no proceedings in bankruptcy are pending against any person or party executing this assignment.

Witness my hand and seal, this 25th day of June 1923.

FREDERICK B. WELLS [SEAL]
_____ _____ [SEAL]
_____ _____ [SEAL]
_____ _____ [SEAL]

(Witnesses to sign on these lines.)

Signed, sealed, and delivered in presence of—

BLANCHE LANE.
W. F. GRENELL.

_____ _____
_____ _____

Note

The signature must be witnessed by two disinterested subscribing witnesses, and the assignment must be acknowledged, using
96 the forms of acknowledgment on back hereof, before a notary public or other officer duly qualified to take acknowledgments of deeds, and certified by him under his official seal.

No assignment shall be of any force or effect unless made in writing and filed with the company at its home office. The company assumes no responsibility as to the validity of any assignment, and the receipt and recording thereof by the company shall be deemed only an acknowledgment of notice of its alleged execution and shall not be taken as an admission of the genuineness of the signature of the assignor nor the validity of the assignee's claims thereunder nor the insurable interest of the assignee.

The company was founded in 1865 as the Provident Life and Trust Company of Philadelphia, and its name was changed on December 29, 1922, to Provident Mutual Life Insurance Company of Philadelphia.

3214 A (395) Revised 1-23

(Acknowledgments on reverse side.)

Individual or partnership acknowledgment

STATE OF MINNESOTA,
County of Hennepin, ss:

On this twenty-fifth day of June 1923, before me, the subscriber, a resident of the State of Minnesota, residing at Minneapolis, duly qualified to take acknowledgments of deeds, personally appeared Frederick B. Wells, known to me to be the person who executed the within or foregoing instrument, and acknowledged the same to be his act and deed.

Witness my hand and official seal the day and year last above written.

W. F. GRENELL,
W. F. GRENELL,
Notary Public, Hennepin County, Minn.

My commission expires Oct. 26, 1927.

Paramount accident policy

This policy provides indemnity for loss of life, limb, sight, or time by accidental means, to the extent herein provided.

The Aetna Life Insurance Company, accident and liability department, of Hartford, Connecticut, hereby insures the person named as applicant in the copy of the application for this policy
97 endorsed hereon, subject to the provisions, conditions, and limitations herein contained, against loss resulting directly and independently of all other causes, from bodily injuries effected during the term of this policy solely through external, violent, and accidental means as follows:

Part I. Death, dismemberment, or loss of sight

If such injuries shall wholly and continuously disable the insured from date of accident and prevent him from performing any and every duty pertaining to his occupation and during the period of such continuous total disability but within two hundred weeks from date of accident shall result, directly and independently of all other causes, in any one of the losses enumerated in this part, or within ninety days from date of accident, irrespective of total disability, result in like manner in any one of such losses, the company will pay the sum set opposite such loss and in addition the weekly indemnity hereinafter specified to the date of death, dismemberment, or loss of sight, but only one of the amounts so specified and the weekly indemnity will be paid for injuries resulting from one accident.

For loss of—	
Life	The principal sum.
Both hands or both feet or sight of both eyes	The principal sum.
One hand and one foot	The principal sum.
One hand and sight of one eye	The principal sum.
One foot and sight of one eye	The principal sum.
One hand or one foot	One half the principal sum.
Sight of one eye	One third the principal sum.

Loss shall mean, with regard to hands and feet, dismemberment by severance at or above wrist or ankle joints; with regard to eyes, entire and irrecoverable loss of sight.

Part II. Weekly indemnity

Total disability

A. If such injuries, directly and independently of all other causes, shall wholly and continuously disable the insured from date of accident and prevent him from performing any and every duty pertaining to his occupation, the company will pay the weekly
98 indemnity hereinafter specified so long as he shall live and suffer such disability.

Partial disability

B. Or, if such injuries, directly and independently of all other causes, shall continuously disable the insured from date of accident and prevent him from performing one or more important daily duties pertaining to his occupation, or for like continuous disability following total disability, the company will pay one half of the amount per week payable for total disability for the period of such partial disability but not exceeding twenty-six consecutive weeks.

No payment of weekly indemnity shall be made in case of any loss enumerated in part I, except as therein provided.

Part III. Elective indemnities

The insured, if he so elect in writing within twenty days from date of accident, may take in lieu of the weekly indemnity hereinbefore provided for total and partial disability, indemnity in one sum according to the schedule of elective indemnities endorsed hereon if the injury is one set forth in said schedule but not more than one elective indemnity shall be paid for injuries resulting from one accident.

Part IV. Double indemnities

The amounts payable under parts I, II, or III of this policy shall be doubled if the injuries are sustained by the insured (1) while a passenger in or on a public conveyance provided by a common carrier for passenger service (including the platform, steps, or running board of railway or street railway cars), or (2) while a passenger in a passenger elevator (excluding elevators in mines); or by reason and in consequence of (3) the burning of a building provided the insured is therein at the commencement of the fire, or (4) the collapse of the outer walls of a building while the insured is therein, or (5) the explosion of a steam boiler, or (6) a cyclone or tornado, or (7) being struck by lightning.

Part V. Gold bonds

The principal sum insured under this policy shall be payable at the option of the insured or beneficiary, as the case may be, in United States gold coin or its equivalent, or in twenty-year four percent, gold bonds of the Aetna Life Insurance Company. These
99 bonds will be registered or made payable to bearer as desired, and interest thereon will be paid annually until maturity.

Part VI. Surgical indemnities

If the insured shall sustain bodily injuries covered by this policy solely by reason of which any operation or operations named in the schedule of operations endorsed hereon shall be performed by a surgeon during a period of total or partial disability (as herein defined) and within ninety days from date of accident, the company

will pay the largest amount provided in said schedule for any one of the operations so performed in addition to other indemnity herein provided.

If such injuries do not result in disability, but require surgical treatment by a surgeon within ninety days from date of accident, the company will pay the amount actually expended for such treatment, not exceeding the amount of weekly indemnity hereinafter specified.

Part VII. Hospital indemnity

If the insured shall, solely by reason of injuries for which weekly indemnity is payable under this policy, be confined in a hospital within ninety days from date of accident, the company will pay as additional indemnity fifty percent of the weekly indemnity hereinafter specified for the period of such hospital confinement, but not exceeding ten weeks.

Part VIII. Identification

If the insured, by reason of injury or illness, shall be physically unable to communicate with friends, the company upon receipt of a telegram or other message will immediately transmit to his relatives or friends any information respecting him and will defray the expense necessary to put the insured in the care of friends, within the sum of one hundred dollars.

Standard provisions

1. This policy includes the endorsements and attached papers, if any, and contains the entire contract of insurance except as it may be modified by the company's classification of risks and premium rates in the event that the insured is injured after having changed his occupation to one classified by the company as more hazardous than that stated in the policy, or while he is doing any act or thing pertaining to any occupation so classified, except ordinary duties about his residence or while engaged in recreation, in which event the company will pay only such portion of the indemnities
100 provided in the policy as the premium would have purchased at the rate but within the limits so fixed by the company for such more hazardous occupation.

If the law of the State in which the insured resides at the time this policy is issued requires that prior to its issue a statement of the premium rate and classification of risks pertaining to it shall be filed with the State official having supervision of insurance in such State, then the premium rates and classification of risks mentioned in this policy shall mean only such as have been last filed by the company in accordance with such law, but if such filing is not required by such law then they shall mean the company's premium rates and classification of risks last made effective by it in such State prior to the occurrence of the loss for which the company is liable.

2. No statement made by the applicant for insurance not included herein shall avoid the policy or be used in any legal proceeding hereunder. No agent has authority to change this policy or to waive any of its provisions. No change in this policy shall be valid unless approved by an executive officer of the company and such approval be endorsed hereon.

3. If default be made in the payment of the agreed premium for this policy, the subsequent acceptance of a premium by the company or by any of its duly authorized agents shall reinstate the policy, but only to cover loss resulting from accidental injury thereafter sustained.

4. Written notice of injury on which claim may be based must be given to the company within twenty days after the date of the accident causing such injury. In event of accidental death immediate notice thereof must be given to the company.

5. Such notice given by or in behalf of the insured or beneficiary, as the case may be, to the company at 650 Main St., Hartford, Conn., or to any authorized agent of the company, with particulars sufficient to identify the insured, shall be deemed to be notice to the company. Failure to give notice within the time provided in this policy shall not invalidate any claim if it shall be shown not to have been reasonably possible to give such notice and that notice was given as soon as was reasonably possible.

6. The company upon receipt of such notice, will furnish to the claimant such forms as are usually furnished by it for filing proofs of loss. If such forms are not so furnished within fifteen
101 days after the receipt of such notice the claimant shall be deemed to have complied with the requirements of this policy as to proof of loss upon submitting within the time fixed in the policy for filing proofs of loss, written proof covering the occurrence, character, and extent of the loss for which claim is made.

7. Affirmative proof of loss must be furnished to the company at its said office in case of claim for loss of time from disability within ninety days after the termination of the period for which the company is liable, and in case of claim for any other loss, within ninety days after the date of such loss.

8. The company shall have the right and opportunity to examine the person of the insured when and so often as it may reasonably require during the pendency of claim hereunder, and also the right and opportunity to make an autopsy in case of death where it is not forbidden by law.

9. All indemnities provided in this policy for loss other than that of time on account of disability will be paid immediately after receipt of due proof.

10. Upon request of the insured and subject to due proof of loss all accrued indemnity for loss of time on account of disability will be paid at the expiration of each four weeks during the continuance of the period for which the company is liable, and any balance

remaining unpaid at the termination of such period will be paid immediately upon receipt of due proof.

11. Indemnity for loss of life of the insured is payable to the beneficiary if surviving the insured, and otherwise to the estate of the insured. All other indemnities of this policy are payable to the insured.

12. If the insured shall at any time change his occupation to one classified by the company as less hazardous than that stated in the policy, the company, upon written request of the insured, and surrender of the policy, will cancel the same and will return to the insured the unearned premium.

13. Consent of the beneficiary shall not be requisite to surrender or assignment of this policy, or to change of beneficiary, or to any other changes in the policy.

14. No action at law or in equity shall be brought to recover on this policy prior to the expiration of sixty days after proof of loss has been filed in accordance with the requirements of this
102 policy, nor shall such action be brought at all unless brought within two years from the expiration of the time within which proof of loss is required by the policy.

15. If any time limitation of this policy with respect to giving notice of claim or furnishing proof of loss is less than that permitted by law of the State in which the insured resides at the time this policy is issued, such limitation is hereby extended to agree with the minimum period permitted by such law.

16. The company may cancel this policy at any time by written notice delivered to the insured or mailed to his last address as shown by the records of the company together with cash or the company's check for the unearned portion of the premiums actually paid by the insured, and such cancellation shall be without prejudice to any claim originating prior thereto.

19. If a like policy or policies, previously issued by the company to the insured, be in force concurrently herewith, making the aggregate indemnity for loss other than that of time on account of disability in excess of $22,500.00, or the aggregate indemnity for loss of time on account of disability in excess of $75.00 weekly, the excess insurance of either kind shall be void and all premiums paid for such excess shall be returned to the insured.

Additional provisions

A. Wherever the word "company" is used in this policy it shall be deemed to mean the company issuing it, and wherever the word "insured" is so used it shall be deemed to mean the applicant named in the copy of the application. Wherever the word "beneficiary" is so used it shall be deemed to mean the person named as beneficiary in the copy of the application or the person substituted as such. Wherever the word "injuries" is so used it shall be deemed to mean bodily injuries effected as described in the insuring clause.

B. Upon the occurrence of any one of the losses enumerated in part I of this policy, all insurance hereunder shall immediately cease and upon payment of indemnity therefor this policy shall be surrendered to the company. The limit of liability as expressed in standard provision no. 19 refers to the principal sum and weekly indemnity provided by the policy or policies issued by this company to the insured. On the limit stated proportionate in-
103 creases, as provided by the double indemnity provision, the surgical operation provision, and/or the hospital indemnity provision, will be allowed.

C. This insurance shall not cover accident, injury, disability, death, or other loss caused directly or indirectly, wholly or partly, by bodily or mental infirmity, hernia, ptomaines, bacterial infections (except pyogenic infections which shall occur simultaneously with and through an accidental cut or wound), or by any other kind of disease, nor shall it cover suicide, sane or insane, nor shall it cover any injury, fatal or nonfatal, caused directly or indirectly by war or by any act of war, or sustained by the insured while in or on any vehicle or mechanical device for aerial navigation, or in falling therefrom or therewith, or while operating or handling any such vehicle or device, nor shall it cover the insured while in military or naval service in time of war.

This insurance shall not cover accident, injury, disability, death, or other loss caused directly or indirectly by medical or surgical treatment except such as may result directly from surgical operations made necessary solely by injuries covered by this policy and performed within ninety days after date of accident.

D. A copy of any assignment shall be given within thirty days to the company, which shall not be responsible for its validity. No provision of the charter, constitution, or bylaws of this company shall be used in defense of any claim arising under this policy unless such provision is incorporated in full in this policy.

E. This policy is issued in consideration of the payment of the premium and of the statements made in the application, copy of which is endorsed hereon and is hereby made a part of this contract. Failure to comply with any of the provisions contained in this policy shall invalidate all claims hereunder.

F. The insured's occupation and duties thereof are fully described as follows: "Vice president, admin. executive supervision, office traveling."

G. The insured's occupation is classified by the company as "preferred."

H. The principal sum of this policy is thirty thousand dollars.

I. The weekly indemnity of this policy is one hundred
104 dollars.

J. The premium for the term of this policy is one hundred dollars.

K. The date of this policy is May 10th, 1922.

L. This policy is issued for a term of twelve months, to commence on the day this policy is dated beginning and ending at twelve o'clock noon, standard time of the place where the insured resides, but it may be renewed with the consent of the company by the payment of the premium in advance.

In witness whereof the Aetna Life Insurance Company has caused this policy to be signed by its president and a secretary but the same shall not be binding upon the company until countersigned by a duly authorized agent or cashier of the company.

M. G. BULKLEY, *President.*
J. M. PARKER, JR., *Secretary.*

Countersigned:
KARL H. GOTH,
Resident Manager,
By C. H. KELBOURN, *Cashier.*

(Schedule of elective indemnities under part III printed above and schedule of operations under part IV printed above are omitted as immaterial. Application of the insured for the above accident policy, also omitted as immaterial, directs payment of the policy to Mary Drew Wells, wife of the insured, in case of death.)

Endorsed in the margin of the application of the insured for the above accident policy is the following:

Request for change of beneficiary having been executed by the insured, as provided in standard provision no. 13 hereof, the beneficiary under this policy, from and after noon of June 26, 1923, is Minneapolis Trust Co., related to the insured as trustee and not the beneficiary named in the copy of application endorsed hereon.

AETNA LIFE INSURANCE COMPANY,
J. M. PARKER, JR., *Secretary.*

105 Aetna Life Insurance Company, accident and liability department, Hartford, Connecticut

Additional benefit rider, paramount accident policy

The benefits under accident policy no. PA-9764, issued to Frederick Brown Wells, are hereby amended as follows:

The insuring clause is hereby eliminated and the following language substituted therefor:

Hereby insures the person named as applicant in the copy of the application for this policy endorsed hereon, subject to the provisions, conditions, and limitations herein contained, against loss resulting directly and independently of all other causes, from bodily injuries effected during the term of this policy solely through accidental means as follows:

The following benefits are added to part I:

Or, in the event of loss of both hands, or both feet, or the sight of both eyes covered and defined as above, if the insured shall so

elect in writing ninety days after the date of such loss, the company will pay in lieu of the specific indemnity enumerated above the weekly indemnity hereinafter specified so long as the insured shall live.

Instalment option to beneficiary

In case of valid claim for death under this policy, the beneficiary may elect to have it paid in monthly instalments as follows, for each $1,000, (first instalment to be paid immediately after receipt of due proof of claim):

60 monthly instalments certain of	$18.19
or 120 monthly instalments certain of	9.86
or 180 monthly instalments certain of	7.14
or 240 monthly instalments certain of	5.78

Upon the written request of the beneficiary at any time before all of the instalments elected hereunder shall have been paid, or upon the like request of her executor or administrator if she shall die before receiving all of such instalments, the then present value of the remainder thereof computed at three and one-half per cent interest will be paid in one sum to the beneficiary or to her executor or administrator, as the case may be.

Part VII is hereby eliminated and the following language substituted therefor:

106 Part VII. Hospital indemnity

If the insured shall, solely by reason of injuries for which weekly indemnity is payable under this policy, be confined in a hospital within ninety days from the date of accident, the company will pay as additional indemnity fifty per cent, of the weekly indemnity hereinafter specified for the period of such hospital confinement, but not exceeding twenty consecutive weeks.

The following benefits are added under part IX:

Part IX. Nurses fees

If the insured shall, solely by reason of injuries for which weekly indemnity is payable under this policy, be necessarily attended by a graduate nurse within ninety days from date of accident the company will pay as additional indemnity fifty per cent of the weekly indemnity hereinafter specified for the period of time during which he is necessarily attended by said nurse but not exceeding twenty consecutive weeks, provided no claim is made under part VII for hospital indemnity.

Additional provisions B and C are hereby eliminated and the following language substituted therefor:

B. Upon the occurrence of any of the losses enumerated in part I of this policy, all insurance hereunder shall immediately cease as to injury from any further accident and upon payment of indemnity for such loss this policy shall be surrendered to the company. The limit of liability as expressed in standard provision no. 19 refers to the principal sum and weekly indemnity provided by the policy or policies issued by this company to the insured. On the limit stated proportionate increases, as provided by the double indemnity provision, the nurse's fee provision, the surgical operation provision, and/or the hospital indemnity provision, will be allowed.

C. This insurance shall not cover accident, injury, disability, death or other loss caused directly or indirectly, wholly or partly, by bodily or mental infirmity, ptomaines, bacterial infections (except pyogenic infections which shall occur simultaneously with and through an accidental cut or wound), or by any other kind of disease, including hernia (except that in event of disability due to hernia the company will pay single weekly indemnity for a period not exceeding two weeks, anything to the contrary in this policy notwithstanding); nor shall it cover suicide, sane or insane, nor shall it cover any injury, fatal or nonfatal, caused directly or in-
107 directly by war or by any act of war, or sustained by the insured while in or on any vehicle or mechanical device for aerial navigation, or in falling therefrom or therewith, or while operating or handling any such vehicle or device, nor shall it cover the insured while in military or naval service in time of war.

This insurance shall not cover accident, injury, disability, death, or other loss caused directly or indirectly by medical or surgical treatment except such as may result directly from surgical operations made necessary solely by injuries covered by this policy and performed within ninety days after date of accident.

These amended benefits shall apply only to injuries sustained on or after July 31, 1922, and while the policy is in full force and effect.

This rider is void if attached to other than a paramount accident policy bearing form no. 3284.

J. M. PARKER, JR., *Secretary.*

Form 3284—R.

This policy provides indemnity for loss of life, limb, sight, or for disability by accidental means, to the extent herein provided

The Preferred Accident Insurance Company of New York (herein called the company) in consideration of the representations and agreements contained in the application for this policy (a copy of which application is indorsed hereon and is made a part hereof), and of the annual premium of fifty dollars, does hereby insure, subject to all provisions, conditions, and limitations hereinafter contained or endorsed hereon, Frederick B. Wells (herein called the

insured) of Minneapolis, State of Minnesota, occupation vice president and whose duties are fully described in the aforementioned application, for the period of twelve months beginning at twelve o'clock noon (standard time), on the 16th day of August 1911
against loss or disability as herein defined, resulting directly,
108 independently and exclusively of any and all other causes
from bodily injury effected solely through accidental means, (excluding suicide, sane or insane, or any attempt thereat, sane or insane), and as specified in the following schedules:

Schedule of indemnities

Part I. Single indemnity

Loss of life, limb, limbs, or sight.—If such bodily injury shall, from the date of the accident, and independently and exclusively of all other causes, directly, continuously, and totally disable and prevent the insured from performing any and every kind of duty pertaining to his occupation, and if, during the period of such continuous and total disability, such bodily injury shall be the sole and direct cause of any one of the losses enumerated in this part, the company will pay the sum specified opposite such loss and in addition thereto an indemnity of sixty dollars ($60.00) a week for the period of such continuous and total disability between the date of the accident and the date of such loss. Or, if within ninety days from the date of the accident, irrespective of total disability, such bodily injury shall be the sole and direct cause of any one of the losses enumerated in this part, the company will pay the sum specified opposite such loss.

For loss of life	$10,000
" " " both hands by severance at or above the wrists	10,000
" " " both feet by severance at or above the ankles	10,000
" " " one hand and one foot by severance at or above the wrist or ankle	10,000
" " " entire sight of both eyes if irrecoverably lost	10,000
" " " entire sight of one eye if irrecoverably lost, and one foot by severance at or above the ankle	10,000
" " " entire sight of one eye if irrecoverably lost, and one hand by severance at or above the wrist	10,000
" " " either leg by severance at or above the knee	6,000
" " " either arm by severance at or above the elbow	6,000
" " " either hand by severance at or above the wrist	5,000
" " " either foot by severance at or above the ankle	5,000
" " " entire sight of one eye if irrecoverably lost	5,000

Indemnity for any of the above losses (other than for loss of life) shall be payable to the insured. Indemnity for loss of life shall be payable to the beneficiary, if any, living; otherwise to the legal representatives of the insured.

Part II. Single indemnity—total and partial disability

Total disability

Or, if such bodily injury shall not result in any of the losses enumerated in part I, but shall directly, immediately,
109 wholly and continuously disable and prevent the insured from attending to any and every kind of duty $60.00
pertaining to his occupation, the company will pay him, while so disabled, a weekly indemnity of sixty dollars.

Partial disability

Or, for a period, not exceeding twenty-six consecutive weeks, during which the insured shall, by reason of such bodily injury, be immediately and continuously disabled and prevented from performing fully work essential to the duty $25.00
or duties pertaining to his regular occupation, or for like disability, not exceeding twenty-six, immediately following total disability, the company will pay him a weekly indemnity of twenty-five dollars.

Part III. Double indemnity

Or, if such bodily injury is caused by means as aforesaid and is sustained (1) while the insured is in or on a public conveyance (including the platform, steps, or running-board thereof) provided by a common carrier for passenger service, or, (2) while a passenger and is within a passenger elevator (elevators in mine excepted), or (3) if such injury is caused by the burning of a building while the insured is therein, or, (4) if caused by a stroke of lightning, or, (5) if caused by the collapse of the outer walls of a building while the insured is therein, or, (6) if caused by the explosion of a steam-boiler—then the amount to be paid shall be double the sum that would otherwise be payable as provided in parts I or II or V hereof.

Part IV. Special indemnity

Freezing, hydrophobia, asphyxiation, if caused in either case by accidental means, or blood poisoning resulting directly from a bodily injury caused solely by accidental means (and not otherwise) shall be deemed to be covered by this policy.

Part V. Optional indemnity

If the insured shall sustain bodily injury received as set forth in this policy and named in the following "Schedule of optional indemnities" he may elect, subject to all the terms and pro-
110 visions hereof, to receive the amount of indemnity specified opposite such injury in lieu of all other indemnity for either

total or partial disability, provided he shall signify his choice in writing addressed to the company at New York within two weeks from the date of accident. No claim for more than one of the indemnities in said schedule, the result of any one accident, shall be valid.

Schedule of optional indemnities

(Schedule of optional indemnities omitted as immaterial.)

Part VI. Medical attendance indemnity

Or, if the insured sustains a bodily injury that does not result in any disability, but shall require immediate medical or surgical treatment by a physician or surgeon, the company will reimburse the insured for the cost thereof, not to exceed twenty-five dollars, provided the attending physician's or surgeon's receipted bill for such treatment is filed with the company within thirty days from the date of the accident.

Part VII. Hospital indemnity

If a bodily injury for which indemnity is payable under this policy, is suffered by the insured, and if on account of said bodily injury and within ninety days from the date of the accident the insured is removed to a regularly incorporated hospital, the company—provided that no claim is made under part VIII (surgical operation fees)—will pay the insured (in addition to the indemnity payable for said bodily injury) a weekly indemnity of twenty-five dollars ($25.00) for the period, not exceeding ten weeks, during which the insured is necessarily confined in the said hospital.

Part VIII. Surgical operation fees

If a bodily injury for which indemnity is payable under this policy is suffered by the insured, and if on account of said bodily injury and within ninety days from the date of the accident, the insured undergoes a surgical operation named in the following schedule of operations the company will pay the insured (in addition to the indemnity payable for said bodily injury) the sum set opposite such operation in said schedule: but payment shall not be made for more than one (the first) operation resulting from any one accident. No payment will be made on account of any operation resulting from a bodily ailment or infirmity that existed prior to the issue of this policy.

111 Schedule of operations

(Schedule of operations omitted as immaterial.)

Part IX. Identification of indemnity

If such injury shall render the insured physically unable to communicate with relatives or friends the company will, upon the receipt

of a telegram or other message giving this policy number, immediately transmit to the beneficiary all information in its possession respecting the insured and will pay, in addition to the indemnity otherwise provided herein, the expense necessary to place the insured in communication with and in care of relatives or friends, but such expense and the liability of the company under this part shall not exceed one hundred dollars ($100).

Beneficiary rider. No. B.I.R. 1119

The Preferred Accident Insurance Company of New York (herein called the company), in consideration of the statements contained in the application for this rider (copy of which is endorsed hereon and which is made a part hereof) does hereby insure Mary Drew Wells (herein called the insured), under this rider (which is attached to and forms a part of policy 749189 issued by this company). Against bodily injury effected solely through accidental means (suicide, sane or insane, or any attempt thereat, sane or insane, not included), if sustained (1) while the insured under this rider is a passenger and is within any railway (or street railway) passenger car, or (2) while she is a passenger and is on board a steam vessel licensed for the regular transportation of passengers, or (3) while she is a passenger and is within a passenger elevator (elevators in mines excepted), or (4) if such bodily injury is caused by the burning of a building while she is therein, or (5) is caused by a stroke of lightning, or (6) caused by the collapse of the outer walls of a building while she is therein, to wit: if such bodily injury, sustained and received as above defined, shall directly and independently of all other causes, and within ninety days from the date of such accident result in any one of the following losses or disabilities, the company will pay to the insured under this rider (other than for loss of life), the
112 sum specified opposite such loss or disability, but payment shall not be made for more than one (the larger) of the indemnities enumerated below as the result of any one accident.

Schedule of indemnities

Disabilities		Disabilities—Continued	
For loss of life	$10,000	For loss of entire sight of one eye, if irrecoverably lost, and one hand by severance at or above the wrist	$10,000
For loss of both hands by severance at or above the wrists	10,000	For loss of either hand by severance at or above the wrist	5,000
For loss of both feet by severance at or above the ankles	10,000	For loss of either foot by severance at or above the ankle	5,000
For loss of one hand and one foot by severance at or above the wrist or ankle	10,000	For loss of entire sight of one eye if irrecoverably lost	2,000
For loss of entire sight of both eyes if irrecoverably lost	10,000	For loss of one or more entire fingers by severance	320
For loss of entire sight of one eye, if irrecoverably lost, and one foot by severance at or above the ankle	10,000		

Disabilities—Continued	
For loss of one or more entire toes by severance	$400.00
For complete hernia	160.00
For complete dislocation, viz:	
Of the shoulder	120.00
Of the elbow	200.00
Of the wrist	240.00
Of the hip	600.00
Of the knee or of the ankle	320.00
Of two or more bones of the foot (not toes)	320.00
Of two or more toes or two or more fingers	$120.00
For complete fracture of bones, viz:	
Of the skull, both tables	640.00
Of the lower jaw	160.00

Disabilities—Continued	
For complete fracture of bones, viz—Continued.	
Of the clavicle (collar bone)	$320.00
Of the pelvis	480.00
Of the thigh	600.00
Of the leg (tibia or fibula) or of the knee cap	400.00
Of the arm	320.00
Of two or more ribs	200.00
Of two or more bones of the foot (not toes)	240.00
Of two or more bones of hand (not fingers)	240.00
Of two or more toes or two or more fingers	200.00

For disability.—In case of nonfatal bodily injury (other than mentioned in the foregoing schedule) sustained and received as provided above in this rider and which shall independently of all other causes and from date of accident totally and continuously disable and prevent the insured under this rider from attending to any and every kind of duty pertaining to her usual occupation or employment the company will pay her while so disabled, for a period not exceeding ten consecutive weeks, a weekly indemnity of thirty dollars ($30.00).

113 Operation fee

Or, if bodily injury so sustained and received by the insured under this rider shall, within ninety days from date of receipt thereof, necessitate some one of the surgical operations named in the "Schedule of operations" printed on the above-numbered policy, the company will, in addition to the indemnity above provided, pay one half of the amount specified opposite such operation in said schedule but payment shall not be made for more than one (the first) operation as the result of any one accident. No payment will be made on account of any operation resulting from a bodily ailment or infirmity which existed prior to the issue of this rider.

Provided:

1. The person insured under this rider is a female and at the date of injury is over 18 and under 60 years of age, and is not the insured or the insured beneficiary under any other accident or disability policy or beneficiary rider issued by the company.

2. The insurance under this rider shall begin at twelve o'clock noon of the date given below and terminate when the insurance under the above-numbered policy terminates, or at such earlier date as the insured, under this rider, shall attain the age of 60 years or shall become deaf, blind, or a cripple.

3. Indemnity for loss of life as provided in this rider shall be payable to the executors or administrators of the insured under this rider.

4. This rider is subject to all of the provisions of above-numbered policy.

In witness whereof the Preferred Accident Insurance Company of New York, has caused this rider to be signed by its president and secretary.

Illegible signature,
President.
WILFRID C. POTTER,
Secretary.

Dated and countersigned this 28th day of August 1911.
By W. T. Hughes. Countersigned by Morris Boos.
2nd Ed. April 1911.

114 Provisions

Section A. No assignment of interest under this policy shall bind the company unless consent thereto is formally endorsed hereon by the president or secretary of the company. Any failure to comply with the provisions of this policy shall render invalid any claim made hereunder.

Section B. This policy, a copy of the application therefor signed by the insured and endorsed hereon, and any riders or endorsements bearing the signature of the president, a vice president or the secretary of the company, and endorsed hereon or attached hereto, constitute the entire contract of insurance, except as the same may be affected by any table of rates or classification of risks filed by the company with the insurance department of the State wherein this policy is issued, and effective at the time of such issue or delivery.

Section C. In the event of any loss or disability for which claim may be made under this policy, notice of such loss or disability shall be given within twenty days from date of the accident upon which claim is based to the company at its home office, No. 290 Broadway, in the city of New York, in writing, with full particulars of the accident and injury, provided, however, that in case of accidental death, immediate notice thereof is required, unless the notices herein specified shall be shown not to have been reasonably possible, in which event such notice must be given as soon as it may become reasonably possible. Notice of a claim for indemnity shall be deemed sufficient when given to the home office of the company or to a duly authorized agent of the company in the city, town, or county in which the insured shall reside at the time of giving such notice.

Affirmative proofs in writing must be filed with the company at its home office as follows:

Accident claims.—Affirmative written proof of loss of life, limb, limbs, sight, total disability or partial disability, and that the same resulted, exclusively from bodily injury effected solely through accidental means within the terms and provisions of this policy, must be furnished to the company at its said home office, within ninety days after the termination of the period of disability for which the

company is liable, and in case of any claim for either loss of life, limb, limbs, or sight, within ninety days after the occurrence of such loss.

115 Surgical operation fees or hospital indemnity.—Affirmative proof of a surgical operation, or of hospital confinement, must be furnished to the company at its said home office, within ninety days from the date of the operation or of the termination of the confinement in a hospital.

The company will pay valid claims under this policy immediately on the receipt by it of due proofs as hereinbefore required. Any indemnity (other than for loss of life) that may be due at the time of the insured's death shall be payable to his legal representatives.

Section D. If the insured shall become entitled to weekly indemnity under this policy for a period in excess of thirteen weeks, the weekly indemnity to which he may be entitled for any portion of such entire period (providing such portion is not less than thirteen weeks) shall be payable upon the insured's filing affirmative proof, as hereinbefore set forth, for each portion of the entire period for which claim is made. Proof covering such entire period must be filed as hereinbefore required.

Section E. Any medical adviser of the company shall be allowed to examine the person or body of the insured in respect to any alleged injury, disability, or cause of death, as often and in such manner as he may reasonably require, and he shall also have the right and opportunity, when acting in compliance with State statutes governing, to make an autopsy in case of death, and also to be present in any case where an autopsy is performed on the body of the insured under the direction of a public officer or by the consent of the insured's family.

Section F. The consent of the beneficiary shall not be requisite to a surrender or an assignment of this policy, or to a change of beneficiary, or to any other change in this policy.

Section G. The company's liability shall not in any case extend to more than one part of this policy on account of any one accident to the insured, except as provided in parts VII, VIII, and IX hereof.

Section H. If the insured shall be injured, fatally or otherwise, in any occupation classified by this company as more hazardous than that stated in this policy (except ordinary duties about his residence or while engaged in recreation) the company's liability shall be only for such proportion of the principal sum or indemnity herein provided as the premium paid by him would have
116 purchased at the rate, and within the limits fixed by the company for such more hazardous occupation according to its rates and classification of risks filed prior to the occurrence of the injury for which indemnity is claimed, with the State official having supervision of insurance companies in the State where the insured resides at the time this policy is issued.

Section I. If a past due premium on this policy shall be accepted by the company or by a branch office of the company or by any duly

authorized agent of the company, such acceptance shall reinstate this policy in full effect as to any accident and injury happening after the date of such acceptance.

Section J. Without prejudice to the rights of the insured as respects anything that has occurred during the time this policy has been in force, the company may cancel this policy at any time by written notice delivered to the insured or mailed to him at his last address as shown by the records of the company and the tender of the company's check for the unearned portion, if any, of the premium.

Section K. No statement made by the insured, not incorporated in or endorsed on this policy issued to the applicant, shall void this policy or be used in evidence and no provision of the charter, constitution, or bylaws shall be used in defense of any claim under this policy unless such provision is incorporated in full in this policy; but this requirement shall not be deemed to apply to the table of rates or manual of classification of risks filed by the company with the State official having supervision of insurance companies in the State wherein this policy is issued prior to the date of the occurrence of the injury for which indemnity is claimed.

Section L. No legal proceedings for a recovery hereunder shall be brought within sixty days after the receipt of due proof at the home office of the company in New York City, nor brought at all unless begun within thirty months from the date specified herein for filing such proof.

Section M. No erasure or change appearing on this policy as originally printed, and no change or waiver of any of its terms or conditions or statements, whether made before or after the date of this policy, shall be valid unless endorsed hereon and signed by the president or secretary of the company.

Section N. This policy does not cover any injury, either
117 fatal or nonfatal, which may be received by the insured either while in or on or while entering or leaving any balloon, airship, monoplane, or other aerial device.

Section O. If any limitations as to time contained in this policy shall be less than required by the statutory provisions in relation thereto of the State wherein the insured resides, it is agreed that such limitations shall be extended to the minimum requirements prescribed by the laws of such State.

In witness whereof the Preferred Accident Insurance Company of New York has caused this policy to be signed by its president and secretary.

Signature illegible.
President.
WILFRID C. POTTER,
Secretary.

Examined and countersigned by R. E. Vredinburgh.
Countersigned by Morris Boos.

(Applications of the insured for the above policy and rider omitted as immaterial, directs payment of the policy to Mary Drew Wells, wife of the insured, in case of death.)

Mr. Frederick B. Wells,
Minneapolis, Minn.

In accordance with your request, the beneficiary named in policy no. 749189 heretofore issued by the Preferred Accident Insurance Co. of New York is hereby changed by substituting Minneapolis Trust Company, trustee, in the place and stead of as heretofore recorded.

Dated at the office of the Preferred Accident Insurance Company of New York, this 2nd day of July 1923.

Signature illegible,
President.
Wilfrid C. Potter,
Secretary.

Rider no. 26 ed. Oct. 1913.

Form DWB

This policy provides indemnity for loss of life, limb, sight, or time caused by bodily injuries as herein limited and provided.

118 The Connecticut General Life Insurance Company of Hartford, Conn., in consideration of the premium and of the statements contained in the application for this policy, a copy of which is endorsed hereon and made a part hereof, and subject to the definitions, provisions, and limitations, as conditions hereinafter contained or endorsed hereon hereby insures Frederick B. Wells, of Minneapolis, Minnesota, occupation vice president, executive supervision, office and traveling, the person named in said application, against loss or disability resulting directly, independently, and exclusively of all other causes from bodily injuries effected solely through accidental means—suicide while sane or insane is not covered—in the amounts hereinafter specified.

Schedule of fixed indemnities

Section 1. If any one of the losses enumerated in this section shall result solely from such injuries within twelve months from the date of the accident, the company will pay the sum set opposite such specific loss.

For loss of	
Life, Both hands, Both feet, One hand and one foot, One hand and sight of one eye, One foot and sight of one eye, Sight of both eyes.	The principal sum of four thousand and 00/100 dollars.
Either hand, Either foot, Sight of one eye.	One half the principal sum.
Thumb and index finger of either hand.	One third the principal sum.

Additional monthly payments

Section II. If such injuries shall result in the death of the insured, the company will pay to the beneficiary the sum of eighty and
119 00/100 dollars in addition to the principal sum, and a like amount monthly during the first year following the death of the insured.

Permanent disablement

Section III. If such injuries do not result in any of the losses specified in section 1, but do immediately, wholly, and continuously disable and prevent the insured from performing any and every duty pertaining to his occupation, the company, upon receipt of due proof that the insured has been so disabled for a period of twelve months, and will thereafter, and during his life by reason thereof be continuously and permanently prevented from pursuing any gainful occupation, will pay him the sum of twenty-four and 00/100 dollars, and a like amount monthly in lieu of all other indemnities, so long as said disability continues.

Standard provisions

(Omitted as immaterial. The standard provisions of this policy are identical with the standard provisions in accident policy of the Aetna Life Insurance Company printed above on page 72.)

Additional provisions

(a) A copy of any assignment of interest under this policy shall be given to the company within thirty days from the date thereof; and the company shall not be responsible for the validity of any assignment.

(b) Not more than one fixed indemnity shall be payable as the result of any one accident; upon the occurrence of any injury causing any loss described in section I all insurance under this policy shall immediately cease and the payment of indemnity therefor shall terminate this policy. Loss of hand or hands or loss of foot or feet or loss of thum and index finger shall mean actual severance thereof at or above the proximal joint. Loss of sight of eye or eyes shall mean total blindness thereof beyond remedy by surgical or other means.

(c) This insurance shall not cover accident, injury, disability, death, or other loss caused directly or indirectly, wholly or partly, by bodily or mental infirmity, ptomaines, bacterial infections (except pyogenic infections which shall occur simultaneously with and through accidental cut or wound), or by any other kind of disease; nor shall it cover any injury, fatal or non fatal, caused directly or indirectly by war or by any act of war, or sustained by
120 the insured while participating in or in consequence of having participated in aeronautics; nor shall it cover military or naval service in time of war.

(d) The premium for this contract is ten and 00/100 dollars; and the contract is made for a term of twelve months, from the 27th day of Sept. 1920, commencing and ending at twelve o'clock noon, standard time of the place where it is countersigned; but the same shall not be binding upon the company until countersigned by its duly authorized agent. This policy may be renewed subject to all its provisions, from term to term, with the consent of the company and by the payment of the premium in advance.

In witness whereof the Connecticut General Life Insurance Company has caused this policy to be signed by its president and secretary and countersigned by its duly commissioned agents, Wells, Potter, Fish & Ustick, Inc.

R. M. HUNTINGTON,
President.
A. P. WOODWARD,
Secretary.

Countersigned at New York, N.Y., by Wells, Potter, Fish & Ustick, Inc.

F. H. WELLS, *Treasurer.*

No. MIU 1062.

Temporary and permanent disablement rider

In consideration of an additional annual premium of thirty and 00/100 dollars, policy no. DWB-5478 is hereby intended to provide as follows:

A. If such injuries do not result in any of the losses specified in section 1 as herein modified, but do from the date of the accident alone, and independently and exclusively of all other causes, wholly and continuously disable and prevent the insured from performing any and every duty pertaining to his occupation, the company will pay the insured indemnity at the rate of five hundred and 00/100 dollars per month so long as such total disability continues.

B. If the insured shall sustain a bodily injury covered by the policy, which shall not result in death or other disability,
121 but shall require surgical treatment, the company will pay the amount actually expended for such treatment, but not exceeding the sum of one hundred twenty-five and 00/100 dollars.

C. Section 1 of the policy is hereby modified by eliminating therefrom any indemnities for the loss of both hands, both feet, or the sight of both eyes.

In witness whereof, the Connecticut General Life Insurance Company has caused this rider to be signed by its president and secretary and countersigned by its duly commissioned agent, Wells, Potter, Fish & Ustick, Inc., this 27th day of Sept., A. D. 1920.

R. M. HUNTINGTON,
President.
A. P. WOODWARD,
Secretary.

Countersigned at New York by Wells, Potter, Fish & Ustick, Inc.

F. H. WELLS, *Treasurer.*

Endorsed in the margin of policy no. DWB-5478 is the following notice of change of beneficiary.

Change of beneficiary

In accordance with the provisions of policy no. DWB-5478 request has been made by the insured, the beneficiary under said policy is changed to Minneapolis Trust Company, trustee, Minneapolis, Minn. Change to take effect this third day of July 1923 at 12 o'clock noon standard time of the place where the insured resides.

CONNECTICUT GENERAL LIFE INSURANCE COMPANY,
A. P. WOODWARD, *Secretary.*

(Application of the insured for the above accident policy is omitted as immaterial.)

122 *Petitioner's Exhibit #5*

Frederick B. Wells trust for the benefit of Thomas Bucklin Wells, Frank Hutchinson Peavey Wells, Frederick Brown Wells, Jr., and Mary Wright Peavey Wells.

I, Frederick B. Wells, a resident of the city of Minneapolis, in the State of Minnesota, in consideration of the sum of one dollar ($1.00), hereby assign, transfer, and convey unto the Minneapolis Trust Company, trustee, the following described property, which has been this day delivered to the said trustee.

Certificate no. 17 for 100 shares of the six percent cumulative preferred stock of the The Wells Securities Company, a Delaware corporation, said stock being of the par value of $100.00 per share; not for its own use and benefit, however, but upon the trusts hereinafter defined:

1. (This paragraph is substantially identical to paragraph numbered 1 in the trust for Thomas Bucklin Wells and certain annuitants, petitioner's exhibit #4 [marginal], page 65 above, and is omitted.)

2. The income from the trust estate, and so much of the trust estate as may be necessary, shall be paid and expended by my trustee to discharge the net annual premiums due and payable on those certain policies of accident insurance and those certain policies of life insurance hereinafter described, my trustee having been irrevocably designated as the beneficiary of the life-insurance policies, and as beneficiary of the death benefit recoverable under the accident insurance policies. The net premiums shall be paid to the insurance companies hereinafter named, and such premiums in case of the life insurance shall be the sum remaining to be paid after deducting from the premium named in the face of the policy, the dividend or earnings on such policy for each year, and in case of the accident insurance, the flat premium named in the policies. The trustee is given full power and authority, however, to deal with the said insurance companies and with the said insurance, in any manner

that it may deem for the best interests of the beneficiaries, and
123 may borrow money thereon, or may avail itself of any of the conditions, privileges, or benefits provided by the terms of the said policies of life insurance. The policies of life insurance are particularly described as follows:

Name of company	Policy No.	Date of policy	Face value	
Mutual Benefit Life Ins. Co. of New Jersey	493, 887	Feb. 15, 1909	$15, 000	
Union Central Life Ins. Co	648, 405	Apr. 24, 1920	10, 000	
Same	416, 527	June 13, 1912	5, 000	
Northwestern Mutual Life Ins. Co. of Milwaukee	1, 427, 674	June 1, 1920	15, 000	
Same	906, 944	Dec. 20, 1911	10, 000	
Equitable Life Assurance Society of the U. S	873, 168	June 30, 1898	5, 000	
Mutual Life Insurance Co. of New York	2, 828, 759	Dec. 21, 1920	100, 000	
State Mutual Life Assurance Co. of Worcester, Mass	100, 921	Oct. 1, 1907	5, 000	
Provident Mutual life Ins. Co. of Philadelphia	181, 596	Nov. 22, 1911	5, 000	
Total life insurance				$170, 000
Forwarded				170, 000

The policies of accident insurance are particularly described as follows:

Name of company	Policy No.	Date of policy	Face value	
Aetna Life Insurance Co	19, 553	Aug. 18, 1922	$30, 000	
Connecticut General Life Ins. Co	DWB 5168	Mar. 15, 1920	24, 800	
Total accident insurance				$54, 800
Grand total life and accident				$224, 800

3. Any income from the trust estate in excess of the total sum necessary to pay the successive net annual premiums upon the policies of insurance hereinbefore described, shall be retained by my trustee until a sum has accumulated equal to the amount necessary to pay two successive annual premiums upon all of the policies of insurance hereinbefore described, any accumulations in excess of which amount shall be distributed between my children, herein named as beneficiaries, in the proportion in which they shall ultimately receive the incomes from the trust estate, and in the event that any accumulation provided for herein shall be held invalid for any reason, such accumulation shall be distributed in the same manner.

124 4. Upon my death my trustee shall collect the principal sums named in the aforementioned policies of life insurance, to wit: the sum of one hundred and seventy thousand dollars ($170,000.00), and in the event of my death by accident my trustee shall collect in addition thereto the sums payable under the aforementioned policies of accident insurance and shall expend the proceeds thereof, together with any unexpended income in its possession in the purchase, at their appraised value, from the executor of my estate, of securities belonging to said estate and such securities shall thereupon become and be a part of the trust estate hereby created

and shall be subject to all of the terms and conditions herein defined, including those limiting the reinvestment of funds derived from sales as set forth in paragraph 1. In case of sale of such securities I request, but do not define as a condition, that such securities be first offered for sale to the Wells Securities Company.

5. (Paragraphs 5 and subdivisions (1), (2), (3), and (4) are identical with paragraph 5 and subdivisions of trust for Thomas Bucklin Wells and others, petitioner's exhibit #4, page — above, and are omitted.)

In testimony whereof I have hereunto set my hand at Minneapolis, Minnesota, this 6th day of August, 1923.

FREDERICK B. WELLS.

Signed in the presence of—
JOHN R. WARE.
BLANCHE LOVE.
(Acknowledgment by Frederick B. Wells.)
(Acceptance by trustee.)

Important

See indorsement or indorsements on fourth page.

Organized 1845

No. 493887 $15,000

The Mutual Benefit Life Insurance Company, in consideration of the payment of premiums as hereinafter provided, hereby insures the life of Frederick B. Wells, of Minneapolis, in the County of Hennepin, State of Minnesota (herein called the insured), in the sum of fifteen thousand dollars, for the term of life, payable at its office in Newark, New Jersey, to the executors, administrators, or assigns of the insured, immediately upon receipt of due proof of the death of the insured. Any error made in stating the age of the insured will be adjusted by paying such amount as the premiums paid would purchase at the correct age. Any indebtedness to the company on this policy and any unpaid installments of the then current year's premium will be deducted from the sum insured.

Insured.

Amount.

When, where, and to whom payable.

The annual premium of four hundred and seven dollars and fifty-five cents will be payable by the insured on delivery hereof and on the fifteenth day of February in each year during the continuance of this policy, at the company's office in Newark, New Jersey, or to agents in exchange for receipts signed by the president or treasurer. In lieu of the annual premium the company will accept two hundred and seven dollars and ninety cents semi-

Premiums.

annually in advance, or one hundred and five dollars and ninety cents quarter-annually in advance. There is also payable by the insured on delivery hereof $37 46/100, which is a term premium to cover the risk from the date hereof to 15 February 1909. This policy will not take effect unless the first premium or agreed instalment thereof shall be actually paid during the lifetime of the insured.

Assignment. No assignment of this policy shall take effect until written notice thereof shall be given to the company.

Agents. Agents are not authorized to make, alter, or discharge contracts.

Incontestability. If within one year the insured shall commit suicide, while sane or insane, this policy will be null and void. This policy will be incontestable after one year except for nonpayment of premium.

The provisions and agreements printed on the second and third pages hereof are a part of this contract.

126 As to nonforfeiture provisions and dividends this policy will be treated as if dated and issued on 15 February 1909.

In witness whereof, the Mutual Benefit Life Insurance Company has, by its president and secretary, signed this contract at the city of Newark, in the State of New Jersey, this twentieth day of November one thousand nine hundred and eight.

Examined.

D.

Age 36.

FRED FRELINGHUYSEN, *President.*
J. WM. JOHNSON, *Secretary.*

Attest:

LEWIS A. MORNINGSTON, *Registrar.*

In conformity with request of insured, copy of which is hereto attached, this policy is hereby made payable to Mary D. Wells, wife of the insured, in case she survives the insured. Otherwise to the said insured, his executors, administrators, or assigns.

Newark, N.J., May 7, 1910.

CHAS. A. WOODRUFF, *Registrar.*

Whole life policy. Premiums payable for life. Dividends annually beginning with 2d policy year as provided herein.

Nonforfeiture provisions

(Policy no. 493887 contains the usual standard nonforfeiture provisions which are omitted here as immaterial.)

Loans. At any time while this policy is in force the company will loan up to the limit secured by the cash surrender value, upon

receipt of the policy and a certificate of loan satisfactory to the company. The rate of interest charged shall not exceed six per centum per annum. The loan may be paid off at any time while the policy is in force. If interest be not paid when due, it shall be added to the principal, provided the entire indebtedness then outstanding shall be within the limit secured by the cash surrender value; otherwise nonpayment of interest shall render the policy null and void after one month's notice shall have been mailed to the last known address of the insured and assignee, if any.

(A table, omitted here, is included in the policy showing cash surrender value and values in automatic extended insurance and paid-up insurance.)

Special privileges

If not assigned, this policy may be returned to the company at its office in Newark, New Jersey, with the insured's written request for the appropriate endorsement of the policy by the company:

127 1. To have the beneficiary changed. This change may be made at any time and from time to time while the policy is in force, or within one month from default in premium payments.

* * * * * * *

Indorsed on policy no. 493887 is the following notation:

In conformity with request of insured, copy of which is hereto attached, the beneficiary under this policy is hereby changed from the beneficiary now named therein, to Frederick B. Wells, the insured, his executors, administrators, or assigns. Newark, N.J., July 23, 1923.

C. W. GLOVER, *Registrar.*

(Policy no. 493887 also contains the usual standard provisions relating to changing the method of payment upon maturity and payment of dividends, and a table of instalment values under the various optional methods of payment, all of which are omitted here as immaterial.)

(Application of the insured for policy no. 493887 is omitted here as immaterial.)

Request for change of beneficiary

MINNEAPOLIS, MINN., *May 7th, 1910.*

I, the party insured under policy no. 493887 in the Mutual Benefit Life Insurance Company, hereby request the company to change the beneficiary under said policy from estate to Mary Drew Wells my wife,[6] alternatively.

F. B. WELLS.

[6] Insert the word "Absolutely," or "Alternatively," if new Beneficiary is to be other than the Insured.

Request for change of beneficiary to estate of insured

MINNEAPOLIS, *July 23, 1923.*

I, the party insured under policy no. 493887 in the Mutual Benefit Life Insurance Company, hereby request the company to change the beneficiary under said policy from the beneficiary now named therein to myself, my executors, administators, or assigns.

FREDERICK B. WELLS.
Insured sign here.

Return policy with this request.

NOTE.—This assignment should be made in duplicate and
128 both sent to the company at Newark, N.J., which will return the original and retain the duplicate. *If hereafter canceled the holder should return the original to the company.* The company assumes no responsibility for the validity of any assignment, and its position with respect thereto is not altered by filing the same, save as to notice thereof.

(Form of cancellation on back hereof)

(Original)

Assignment of policy

No. 493887 $15,000

Issued by the Mutual Benefit Life Insurance Company of Newark, N.J. Life of Frederick B. Wells

For value received, I do hereby assign, transfer, and set over unto Minneapolis Trust Company, trustee, absolutely whose post-office address is 115 South Fifth Street, Minneapolis, Minn. (insert full P.O. address), the above-named policy of insurance, and all sum or sums of money, interest, benefit, and advantage whatsoever, now due or hereafter to arise, or to be had or made by virtue thereof; to have and to hold unto the said assignee, Minneapolis Trust Company, trustee absolutely, the said assignee hereby agreeing that in any settlement of the said policy there shall first be deducted all then existing indebtedness to the company on said policy.

In witness whereof, I have hereunto set my hand the eighteenth day of August, one thousand nine hundred and twenty-three, at Minneapolis, County of Hennepin, State of Minnesota.

FREDERICK B. WELLS.

Signed in the presence of—
ANNIE KIRKWOOD.

Received by the Mutual Benefit Life Ins. Co., of Newark, N.J., Aug. 22, 1923.

J. WM. JOHNSON, *Sec'y.*
W.J.A.

129

No. 648405

Amount, $10,000.00. Premium, $379.00. Age, 47

The Union Central Life Insurance Company of Cincinnati, Ohio, in consideration of three hundred seventy-nine & 00/100 dollars and of the payment of a like amount annually on the twenty-fourth day of April in every year during the lifetime of the insured, hereby insures the life of Frederick B. Wells, in the amount of ten thousand dollars, payable, less any indebtedness and advances hereon and any unpaid portion of the premium for the current policy year, at its home office in Cincinnati, Ohio, to Mary Drew Wells, his wife, if living at the death of the insured, otherwise to the administrators, executors, or assigns of the insured, on receipt of due proof of death of said insured during the continuance of this policy.

1. Premium
2. Insured
3. Amount
4. Beneficiary
5. Death

All conditions, benefits, and provisions stated on the subsequent pages are hereby made a part of this policy.

6. Conditions

In witness whereof, the Union Central Life Insurance Company has caused this contract to be signed in the city of Cincinnati, State of Ohio, this twenty-fourth day of April, one thousand nine hundred and twenty.

7. Date

78 words erased before signing

J. R. CLARK, *President.*
GEORGE L. WILLIAMS, *Secretary.*
Illegible signature registrar.

Ordinary life, benefit. Annual dividends, subject to payment of second year's premium.

Premiums and dividends

(Policy no. 648405 contains the usual standard provisions relating to payment of premiums and payment of dividends, all of which are omitted here as immaterial.)

130

Policy values

(Policy no. 648405 contains the usual standard provisions pertaining to extended insurance, paid-up insurance, cash loan and cash surrender values, together with a table of such values, all of which are omitted as immaterial.)

General privileges and conditions

(Policy no. 648405 contains the usual standard provisions relating to incontestability, reinstatement, privilege of change of policy, and change of beneficiary, all of which are omitted as immaterial. The provision reserving to the insured the right to change the beneficiary has been stricken out of policy no. 648405.)

Settlement options

(Policy no. 648405 contains the usual standard provisions for optional settlement at maturity in lieu of cash payment in one sum, together with tables showing the various values under such optional methods of payment, all of which are omitted here as immaterial.)

(Application of the insured for policy no. 648405 is omitted as immaterial.)

(Duplicate)

Assignment

For one dollar to me in hand paid, and for other valuable consideration (the receipt of which is hereby acknowledged) I hereby assign, transfer, and set over to Mary Drew Wells, whose p.o. address is Minneapolis, Minnesota, all my right, title, and interest in policy no. 648405 issued by the Union Central Life Insurance Company of Cincinnati, Ohio, and for the consideration above expressed I do also for myself, my executors, and administrators, guarantee the validity and sufficiency of the foregoing assignment to the above-named assignee, her executors, administrators, or assigns, and her title to the said policy will forever warrant and defend.

In witness whereof, I have hereunto set my hand and seal, this 29th day of January, 1921.

FREDERICK B. WELLS. [SEAL]
——— ——— [SEAL]
——— ——— [SEAL]

131 STATE OF MINNESOTA, *County of Hennepin, ss:*

On this 29th day of January in the year of our Lord 1921, before me the undersigned, a notary public residing in Minneapolis, Minn., duly commissioned and thereunto authorized, came Frederick B. Wells to me known and known to me to be the individual described in and who executed the foregoing assignment, and acknowledged that he executed the same.

(Notary sign here.) C. W. LANE,
Notary Public, Hennepin County, Minnesota.

My commission expires June 29, 1923.

(Original)

Assignment of policy no. 648405 on the life of Frederick B. Wells in the Union Central Life Insurance Company, of Cincinnati, Ohio

I, Mary Drew Wells, the beneficiary and absolute owner of the above-described policy of insurance, do hereby assign said policy to Minneapolis Trust Company, trustee, of Minneapolis, in the State of Minnesota.

Witness my hand and seal at Minneapolis, in the State of Minnesota, this first day of May, 1923.

MARY DREW WELLS. [L.S.]
[L.S.]

Signed in the presence of—
EDITH A. LOUNER.
EVA J. PATTERSON.

I, Frederick B. Wells, the insured under the above described policy of insurance, hereby acknowledge that I have previously assigned to Mary Drew Wells all my right, title, and interest in and to said policy, that I have no right to object to the above assignment nor wish to do so.

Witness my hand and seal at Minneapolis, in the State of Minnesota this twenty-fifth day of June, 1923.

FREDERICK B. WELLS. [L.S.]
[L.S.]

Signed in the presence of—
BLANCHE LOVE.
W. F. GENELL.

132 *No. 416527*

Age, 39; premium, $152.55; amount, $5,000.00

The Union Central Life Insurance Company of Cincinnati, Ohio, in consideration of the payment of one hundred fifty-two 55/100 dollars, and of the payment of a like amount annually thereafter on the thirteenth day of June in every year during the continuance of this policy, does hereby insure the life of Frederick B. Wells, of Minneapolis, in the County of Hennepin in the State of Minnesota, in the amount of five thousand dollars, payable, less the unpaid balance of the current year's premium, if any, and any other indebtedness and advances on the policy, at its home office in Cincinnati, Ohio, to Mary Drew Wells, his wife, if living at the time of the death of the insured, otherwise to the administrators, executors, or assigns of the insured, on receipt of due proof of death of said insured during the continuance of this policy. 1. Premium. 2. Insured. 3. Amount. 4. Beneficiary. 5. Death claim.

This policy together with the application therefor, a copy of which is endorsed hereon, shall constitute the entire contract between the parties. 6. Contract.

Ordinary life, benefit. Edition June, 1911, annual dividends, beginning at the end of the first policy year.

It is hereby agreed:

That the insured shall have the right at any time to change the beneficiary, said change to take effect when endorsed on the policy by the insured and the company. 7. Change of beneficiary

(Policy no. 416527 also contains the usual standard provisions relating to payment of premiums, incontestability, dividends, values in extended insurance, paid-up insurance, and loan and cash
133 surrender values, dividends, reinstatement and settlement options, together with appropriate tables of values under extended insurance, paid-up insurance, and cash and loan surrender values and settlement option provisions, all of which are omitted here as immaterial.)

(Application of the insured for policy no. 416527 is omitted here as immaterial.)

(Duplicate)

Assignment

For one dollar, to me in hand paid, and for other valuable considerations (the receipt of which is hereby acknowledged) I hereby assign, transfer, and set over to Mary Drew Wells, whose p.o. address is Minneapolis, Minn., all my right, title, and interest in policy no. 416527 issued by the Union Central Life Insurance Company of Cincinnati, Ohio, and for the consideration above expressed I do also for myself, my executors, and administrators, guarantee the validity and sufficiency of the foregoing assignment to the above-named assignee, her executors, administrators, or assigns, and her title to the said policy will forever warrant and defend.

In witness whereof I have hereunto set my hand and seal, this 29th day of January, 1921.

FREDERICK B. WELLS. [SEAL.]
——— ——— [SEAL.]
——— ——— [SEAL.]

STATE OF MINNESOTA, *County of Hennepin, ss:*

On this 29th day of January in the year of our Lord 1921, before me the undesigned, a notary public residing in Minneapolis, Minn., duly commissioned and thereunto authorized, came Frederick B. Wells to me known and known to me to be the individual described in and who executed the foregoing assignment, and acknowledged that he executed the *the* same.

(Notary sign here. C. W. LANE,
Notary Public, Hennepin County, Minnesota.

My commission expires June 29, 1923.

134 (Original)

Assignment of policy no. 416527 on the life of Frederick B. Wells in the Union Central Life Insurance Company of Cincinnati, Ohio

I, Mary Drew Wells, the beneficiary and absolute owner of the above-described policy of insurance, do hereby assign said policy

to Minneapolis Trust Company, trustee, of Minneapolis, in the State of Minnesota.

Witness my hand and seal at Minneapolis in the State of Minnesota this first day of May, 1923.

MARY DREW WELLS. [L.S.]
[L.S.]

Signed in the presence of—
EDITH A. LOUNER.
EVA J. PATTERSON.

I, Frederick B. Wells, the insured under the above described policy of insurance, hereby acknowlege that I have previously assigned to Mary Drew Wells all my right, title, and interest in and to said policy, that I have no right to object to the above assignment nor wish to do so.

Witness my hand and seal at Minneapolis in the State of Minnesota this twenty-fourth day of June, 1923.

FREDERICK B. WELLS. [L.S.]
[L.S.]

Signed in the presence of—
BLANCHE LOVE.
W. F. GENELL.

No. 1427674

The Northwestern Mutual Life Insurance Company

Age, 47

In consideration of the payment of six hundred thirteen and 80/100 dollars, the receipt of which is hereby acknowledged, and of the annual payment of a like sum to the said company, on or before the 1st day of June in every year during the lifetime of
135 Frederick B. Wells, of Minneapolis, Minnesota (hereinafter called the insured), promises, upon receipt of due proof of the death of the insured, to pay at its home office unto his wife, Mary D. Wells, beneficiary, the sum of fifteen thousand dollars, less any unpaid premium or premiums for the then current policy year and any other indebtedness to the company on account of this policy.

Subject to the rights of any assignee, the insured (1) may designate one or more beneficiaries if none be named herein, either with or without reservation of the right to revoke such designation; and and (2) may designate one or more contingent beneficiaries whose interest shall be as expressed in, or by endorsement of the company on, this policy; and (3) may change any beneficiary not irrevocably designated; and (4) may change any contingent beneficiary. If there be more than one beneficiary the interest of any deceased beneficiary shall pass to the survivor or survivors unless otherwise directed by the insured.' If no beneficiary or contingent beneficiary survive the insured the proceeds of this policy shall be payable to the executors, administrators, or assigns of the insured. No such

designation, revocation, change, or direction shall be effective unless duly made in writing and filed at the home office of the company (accompanied by this policy for suitable endorsement) prior to or at the time this policy shall become payable.

No assignment of this policy shall be binding upon the company until it be filed with the company at its home office. The company assumes no responsibility as to the validity or effect of any assignment. Satisfactory proof of assignee's interest must be produced on making claim.

This policy is issued and accepted by the parties in interest, subject to the provisions stated on the second and third pages hereof, which are a part of this contract.

In witness whereof, the Northwestern Mutual Life Insurance Company, of Milwaukee, Wisconsin, has by its president and secretary executed this contract, this first day of June, one thousand nine hundred and twenty.

W. D. VAN DYKE, *President.*
A. C. HATHAWAY, *Secretary.*

Whole-life policy. Premiums payable for life. Dividends payable annually.

136 Provisions

(Policy no. 1427674 contains the usual standard provisions relating to incontestability, premium payments, grace for payment of premiums, reinstatement, and dividend options, together with the usual nonforfeiture provisions, loan provisions, and cash surrender value provisions, also table of nonforfeiture and loan values, all of which are omitted here as immaterial.)

Special provisions relating to settlement when this policy becomes payable.

(Policy no. 1427674 contains the usual standard provisions relating to settlement in lieu of lump-sum payment in cash, together with tables showing value of installments under the various option provisions, all of which are omitted here as immaterial.)

(Application of the insured for policy no. 1427674 is omitted here as immaterial. The right to change the beneficiary was not reserved by the insured in the application for policy no. 1427674.)

(Duplicate)

Assignment

For one dollar, to me in hand paid, and for other valuable considerations (the receipt of which is hereby acknowledged), I hereby assign, transfer, and set over to Mary D. Wells, whose p.o. address is Minneapolis, Minnesota, all my right, title, and interest in policy no. 1427674 issued by the Northwestern Mutual Life Insurance Company of Milwaukee, Wis., and for the consideration above expressed

I do also for myself, my executors, and administrators, guarantee the validity and sufficiency of the foregoing assignment to the above-named assignee, her executors, administrators, or assigns, and her title to the said policy will forever warrant and defend.

In witness whereof, I have hereunto set my hand and seal, this 29th day of January 1921.

FREDERICK B. WELLS. [SEAL]
_____ [SEAL]
_____ [SEAL]
_____ [SEAL]

STATE OF MINNESOTA, *County of Hennepin, ss:*

On this 29th day of January in the year of our Lord 1921, before me the undersigned, a notary public residing in Minne-
137 apolis, Minn., duly commissioned and thereunto authorized, came Frederick B. Wells to me known and known to me to be the individual described in and who executed the foregoing assignment, and acknowledged that he executed the same.

(Notary sign here.)

C. W. LANE,
Notary Public, Hennepin County, Minnesota.

My commission expires June 29, 1923.

(Original)

Assignment of policy no. 1427674 on the life of Frederick B. Wells in the Northwestern Mutual Life Insurance Company of Milwaukee, Wisconsin

I, Mary Drew Wells, the beneficiary and absolute owner of the above-described policy of insurance, do hereby assign said policy to Minneapolis Trust Company, trustee, of Minneapolis in the State of Minnesota.

Witness my hand and seal at Minneapolis in the State of Minnesota this first day of May 1923.

MARY DREW WELLS. [L. S.]
_____ [L. S.]

Signed in the presence of—
EDITH A. LOUNER.
EVA J. PATTERSON.

I, Frederick B. Wells, the insured under the above described policy of insurance, hereby acknowledge that I have previously assigned to Mary Drew Wells all my right, title, and interest in and to said policy, that I have no right to object to the above assignment nor wish to do so.

Witness my hand and seal at Minneapolis in the State of Minnesota this twenty-fifth day of June 1923.

FREDERICK B. WELLS. [L. S.]
_____ [L. S.]

Signed in the presence of—
BLANCHE LOVE.
W. F. GENELL.

138 *No. 906944* Age, 39.

The Northwestern Mutual Life Insurance Company

In consideration of the payment of three hundred five and 20/100 dollars, the receipt where of is hereby acknowledged, and of the annual payment of a like sum to the said company, on or before the 20th day of December in every year during the lifetime of Frederick B. Wells of Minneapolis, Minnesota (hereinafter called the insured), promises, upon receipt of due proof of the death of the insured, to pay at its home office unto his wife, Mary D. Wells, beneficiary, subject to the right of the insured to change such beneficiary the sum of ten thousand dollars, less any unpaid premiums or premiums for the then current policy year and any other indebtedness on account of this policy; provided, however, that if there be no beneficiary or contingent beneficiary surviving the insured, such payment unless otherwise directed by the insured and endorsed by the company on this policy shall be made to the executors, administrators, or assigns of the said insured.

Subject to the rights of any assignee and with or without reserving the right of revocation, the insured, (1) may designate a beneficiary or beneficiaries if none be named in this policy, or in the event of the death of any person designated; (2) and may designate a contingent beneficiary or beneficiaries whose interest shall be as expressed in, or by endorsement of the company on, this policy; (3) and may change any beneficiary or contingent beneficiary not irrevocably designated. If there be more than one beneficiary the interest of any deceased beneficiary shall pass to the survivor or survivors unless otherwise directed by the insured and endorsed by the company on this policy. No designation, direction, revocation, or change shall be effective unless duly made in writing, and filed at the home office of the company (accompanied by the policy for suitable endorsement) prior to or at the time this policy shall become payable.

No assignment of this policy shall be binding upon the company until it be filed with the company at its home office. The company assumes no responsibility as to the validity of any assignment, and satisfactory proof of assignee's interest must be produced on making claim.

139 This policy is issued and accepted by the parties in interest subject to the provisions stated on the second and third pages hereof which are a part of this contract.

In witness whereof, the Northwestern Mutual Life Insurance Company, of Milwaukee, Wisconsin, has by its president and secretary executed this contract, this twentieth day of December, one thousand nine hundred and eleven.

GEO. C. MARKHAM, *President.*
A. C. HATHAWAY, *Secretary.*

Whole life policy premiums payable for life. Dividends payable annually.

Provisions

(Policy no. 906944 contains the usual standard provisions relating to incontestability, premium payments, grace for payment of premiums reinstatement, and dividend options, together with the usual nonforfeiture provisions, loan provisions and cash surrender value provisions, also table of nonforfeiture and loan values, all of which are omitted here as immaterial.)

Special provisions relating to settlement when this policy becomes payable

(Policy no. 906944 contains the usual standard provisions relating to settlement in lieu of lump-sum payment in cash, together with tables showing value of installments under the various option provisions, all of which are omitted here as immaterial.)

MILWAUKEE, WIS., *July 16th, 1923.*

By request of the insured the beneficiary in this policy is hereby changed from Mary D. Wells, wife, to the Minneapolis Trust Company, Minneapolis, Minn., trustee. The insured having waived the right to change the beneficiary, such privilege is revoked. It is understood and agreed that the special provisions relating to settlement on the third page of this policy shall be available to said beneficiary only as to the provisions known as option B thereunder. In making payment on or otherwise dealing with this policy while the Minneapolis Trust Company, trustee, shall remain the beneficiary, either on surrender or at maturity, the Northwestern Mutual Life Insurance Company shall not be obliged to deal with or take cognizance of any cestui que trust, and shall not be responsible for the proper application or disposition of any funds paid to said trustee, and any surrender, assignment, release, consent, discharge, or acquittance of or on account of this policy, or any claims thereunder, made by said trustee alone shall protect said Insurance Company and be binding and obligatory upon any and all persons entitled to any benefits from, through or under this policy, or the Minneapolis Trust Company, trustee, or by virtue of its trusteeship.

E. JONES, *Asst. Secretary.*

(Application of the insured for policy no. 906944 is omitted here as immaterial.)

No. 873168

Amount, $5,000.00. Premium, $107.45. Age, 25.

The Equitable Life Assurance Society of the United States hereby assures the life of Frederick B. Wells of Minneapolis, Minn., hereinafter known as the assured, and on receipt of satisfactory proofs of the death of the said assured, providing this policy is then in force, agrees to pay five thousand dollars at its office in the city of

New York, to the assured's executors, administrators, or assigns, subject to the right of the assured to change the beneficiary.

This assurance is granted in consideration of the written and printed application for this policy which is hereby made a part of this contract; and of the payment in advance of one hundred and seven 45/100 dollars, and of the payment of one hundred and seven 45/100 dollars on or before the thirtieth day of June in every year thereafter during the continuance of this contract.

The loans, surrender values, bonus guarantee, options, privileges and conditions stated on the second and third pages hereof, form a part of this contract as fully as if recited at length over the signatures hereto affixed.

New York, July 16, 1898.

H. B. Hyde, *President.*
Wm. R. Bliss, *for Actuary.*

Examined by L.

141 Privileges and conditions

* * * * * * *

This policy is issued with the express understanding that the assured may, providing this policy has not been assigned, change the beneficiary or beneficiaries, at any time during the continuance of this policy, by filing with the society a written request, duly acknowledged, accompanied by this policy; such change to take effect upon the endorsement of the same on the policy by the society.

* * * * * * *

(Policy no. 873168 further contains the usual standard provisions relating to incontestability, days of grace for payment of premiums, cash surrender and loan values, together with a table showing loan and cash surrender values and values in paid-up life insurance.)

Bonus

If the assured be living, and this policy is in force on the thirtieth day of June, nineteen hundred and eighteen, the society will declare a cash bonus payable to the assured, or assigns, and this policy may then be continued or surrendered by said assured, or assigns, under one of the following

Options

(1) Draw entire cash value (consisting of guaranteed cash value as fixed in the above table together with the bonus); or

(2) Convert entire cash value (consisting of guaranteed cash value as fixed in the above table and the bonus) into paid-up life policy[1]; or,

(3) Draw bonus in cash, and continue policy for its full amount; or,

(4) Draw bonus in cash, and surrender this policy for paid-up life policy, for the amount fixed in the above table; or

[1] Options 2 and 6 are subject to a medical examination and the society's approval of the risk for any excess in paid-up assurance over the amount of the original policy.

(5) Draw bonus in cash, and surrender this policy for a paid-up life policy, for the amount of guaranteed cash value fixed in the above table, together with an annuity payable during the lifetime of the assured; or,

(6) Convert bonus into additional paid-up life assurance and continue policy for its full amount[2]; or,

142 (7) Convert bonus into a life annuity and continue policy for its full amount; or,

(8) Convert entire cash value (consisting of guaranteed cash value as fixed in the above table and the bonus) into a life annuity.

WM. R. BLISS, *for actuary.*

In compliance with the written request of the assured duly acknowledged, it is hereby declared that the amount due at the death of the assured shall be payable not as originally provided in a single sum of $5,000 (other conditions and requirements remaining unchanged) but in lieu thereof fifty-six hundred and nine-one dollars shall be payable in ten instalments of $569.10/100 each, the first instalment to be paid upon receipt of satisfactory proofs of death of the assured and the remainder annually thereafter to his mother Annie E. J. Wells, should she survive said assured, her executors, administrators or assigns but should she not survive him, then to the assured's executors, administrators, or assigns. New York, March 2d, 1900.

WM. R. BLISS, *for actuary.*

In compliance with the written request of the assured, duly acknowledged, it is hereby declared that the amount due at the death of the assured shall be payable as originally provided (other conditions and requirements remaining unchanged) to the assured's executors, administrators or assigns.

New York, January 21st, 1907.

(Illegible signature).
Asst. Treasurer.

See later endorsement.

In compliance with the written request of the assured, duly acknowledged, it is hereby declared that the amount due at the death of the assured shall be payable not to the beneficiaries hereinbefore designated but to the assured's wife, Mary Drew Wells, should she survive said assured, her executors, administrators, or assigns, but should she not survive him, then to the assured's executors, administrators, or assigns, other conditions and requirements remaining unchanged.

New York, May 18th, 1910.

F. T. MCCURDY,
Asst. Secretary.

143 Fact that this policy was applied for prior to July 1st, 1898, as evidenced by the fact that the application and medical exam-

[2] Options 2 and 6 are subject to a medical examination and the society's approval of the risk for any excess in paid-up assurance over the amount of the original policy.

ination were both dated prior to July 1st, the revenue stamps affixed thereto will be paid for by the society and are not to be charged against the assured.

On the delivery of this policy the person charged with its delivery must duly cancel the stamps by writing or stamping the date and the initials of his name thereon in accordance with the law.

If this policy should not be delivered, it must be returned to the society with the stamps uncancelled.

W. ALEXANDER, *Secretary.*

(Original)

Assignment

For one dollar, to me in hand paid, and for other valuable considerations (the receipt of which is hereby acknowledged) I hereby assign, transfer, and set over to Mary Drew Wells whose, p.o. address is Minneapolis, Minn., all my right, title, and interest in policy no. 873168 issued by the Equitable Life Assurance Society of the United States, and for the consideration above expressed I do also for myself, my executors and administrators, guarantee the validity and sufficiency of the foregoing assignment to the above-named assignee, her executors, administrators or assigns, and her title to the said policy will forever warrant and defend.

In witness whereof, I have hereunto set my hand and seal, this 29th day of January 1921.

FREDERICK B. WELLS. [SEAL]
———— ————. [SEAL]
———— ————. [SEAL]

STATE OF MINNESOTA, *County of Hennepin, ss:*

On this 29th day of January in the year of our Lord 1921, before me the undersigned a notary public residing in Minneapolis, Minn., duly commissioned and thereunto authorized, came Frederick B. Wells, to me known and known to me to be the individual described in and who executed the foregoing assignment, and acknowledged that he executed the same.

(Notary sign here.) C. W. LANE,
Notary Public, Hennepin County, Minnesota.

My commission expires June 29, 1923.

144 (Original)

Assignment of policy no. 873168 on the life of Frederick B. Wells in the Equitable Life Assurance Society of the United States, New York, N.Y.

For valuable consideration, I, Mary Drew Wells, the beneficiary and absolute owner of the above-described policy of insurance, do hereby assign said policy to Minneapolis Trust Company, trustee, of Minneapolis, in the State of Minnesota.

Witness my hand and seal at Minneapolis, in the State of Minnesota, the first day of May 1923.

MARY DREW WELLS. [L.S.]
——— ———. [L.S.]

Signed in the presence of—
EDITH A. LOUMER.
EVA J. PATTERSON.

I, Frederick B. Wells, the insured under the above described policy of insurance, hereby acknowledge that I have previously assigned to Mary Drew Wells all my right, title, and interest in and to said policy, that I have no right to object to the above assignment nor wish to do so.

Witness my hand and seal at Minneapolis, in the State of Minnesota, the twenty-fifth day of June 1923.

FREDERICK B. WELLS. [L.S.]
——— ——— [L.S.]

Signed in the presence of—
BLANCHE LOVE.
W. F. GRENELL.

Number 2828759

Ordinary life

Face amount, $100,000

Mutual Life Insurance Company of New York, in consideration of the annual premium of forty-four hundred fifty-seven dollars, the receipt of which is hereby acknowledged, and of the payment of a like amount upon each twenty-first day of December, hereafter until the death of the insured, promises to pay at the home
145 office of the company in the city of New York upon receipt at said home office of due proof of the death of Frederick B. Wells of Minneapolis, county of Hennepin, State of Minnesota, the Insured, one hundred thousand dollars, upon surrender of this policy properly receipted, less any indebtedness hereon to the Company and any unpaid premium or premiums necessary to complete premium payments for the policy-year current at such death, to his wife Mary D. Wells, the beneficiary.

Age 48

Annual premium $4,457.00

Death of beneficiary before insured: Change of beneficiary. If any beneficiary die before the insured, the interest of such beneficiary shall vest in the insured, unless otherwise provided herein.

If the interest of a beneficiary shall have vested in the insured, or if the right to change the beneficiary has been reserved, the insured, if there be no existing assignment of this policy, may, from time to time, while this policy is in force, designate a new beneficiary, with or without reserving the right to change the beneficiary, by filing written notice thereof at the home office of the company accompanied

by this policy for suitable endorsement hereon. Such change shall take effect upon the endorsement of the same on the policy by the company.

The right to change the beneficiary has not been reserved.

* * * * * * *

(Policy no. 2828759 further contains the usual standard provisions relating to payment of premiums, participation dividends, privilege of change to other forms of policy, incontestability, options on surrender or lapse, reinstatement and option provisions pertaining to payment in lieu of payment in a single sum, all of which are omitted here as immaterial.)

In order to comply with the provisions of the Minnesota Law (Laws of 1907, chapter 220, section 5, subdivisions 7 and 8 as amended in 1913) the company may defer the making of any loan or the payment of any cash surrender value hereunder for a period of not exceeding sixty days from the date of application therefor.

THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK.
GEO. C. KEEFER, *Secretary.*

146 Use care in filling in blank spaces. Read carefully before executing.

Original assignment

For one dollar, to me in hand paid, and for other valuable considerations (the receipt of which is hereby acknowledged) I hereby assign, transfer, and set over to (relationship, if any, should be stated) Mary D. Wells, my wife, whose p.o. address is Minneapolis, Minnesota, all my right, title, and interest in policy no. 2828759 issued by the Mutual Life Insurance Company of New York, and for the consideration above expressed I do also for myself, my executors, and administrators, guarantee the validity and sufficiency of the foregoing assignment to the above named assignee, her executors, administrators, or assigns, and her title to the said policy will forever warrant and defend.

In witness whereof, I have hereunto set my hand and seal, this 29th day of January 1921.

FREDERICK B. WELLS. [L.S.]
——— ———. [L.S.]

STATE OF MINNESOTA, *County of Hennepin, ss:*

On this 29th day of January in the year of our Lord 1921, before me, the undersigned, a notary public residing in Minneapolis, Minn., duly commissioned and thereunto authorized, came Frederick B. Wells, to me known and known to me to be the individual described in and who executed the foregoing assignment, and acknowledged that he executed the same.

(Notary sign here.) C. W. LANE.
Notary Public, Hennepin County, Minnesota.

My commission expires June 29, 1923.

Notice

The officer before whom the above acknowledgment is taken must affix his official seal. If he has no seal a county clerk's certificate must be furnished, showing officer's authority to act.

Both the original and duplicate instruments must be sent to the company. The duplicate will be retained at the home office and the original will be returned together with the following acknowledgment.

147 In case this instrument is signed by a corporation the proof of execution on the reverse hereof must also be exercised.

Acknowledgment

The duplicate of this original instrument has been noted and filed subject to all claims, liens, and indebtedness, if any, existing in favor of the company against above policy. The company assumes no responsibility as to the validity or effect of the said instrument.

(Illegal signature),
Registrar.
Per B. T. WILDER.

(Original)

Assignment of policy no. 2828759 on the life of Frederick B. Wells in the Mutual Life Insurance Company of New York, of New York, N.Y.

I, Mary Drew Wells, the beneficiary and absolute owner of the above-described policy of insurance, do hereby assign said policy to Minneapolis Trust Company, trustee, of Minneapolis, in the State of Minnesota

Witness my hand and seal at Minneapolis, in the State of Minnesota, this first day of May 1923.

MARY DREW WELLS. (L.S.)
_____ _____ (L.S.)

Signed in the presence of—
EDITH A. LOUMER.
EVA J. PATTERSON.

I, Frederick B. Wells, the insured under the above-described policy of insurance, hereby acknowledge that I have previously assigned to Mary Drew Wells all my right, title, and interest in and to said policy, that I have no right to object to the above assignment nor wish to do so.

Witness my hand and seal at Minneapolis, in the State of Minnesota, this twenty-fifth day of June 1923.

FREDERICK B. WELLS. (L.S.)
_____ _____ (L.S.)

Signed in the presence of—
BLANCHE LOVE.
W. F. GRENELL.

148 Acknowledgment: The duplicate of this original instrument has been noted and filed subject to all claims, liens, and indebtedness, if any, existing in favor of the company against the policy. The company assumes no responsibility as to the validity or effect of the said instrument.

(Illegible signature),
Registrar.
per B.

Number 100921 Ex.

Amount, $5,000. Age, 34. Annual premium, $134.00

The State Mutual Life Assurance Company of Worcester, Massachusetts, incorporated 1844, in consideration of the representations and agreements made in the written and printed applications for the policy, which are hereby made a part of this contract, full copies of which applications are hereunto annexed, and of the surrender of policy number 100921, and in further consideration of the payment of the sum of one hundred and thirty-four dollars, to be made on or before the first day of October, A. D. 1911, and annually thereafter, during the continuance of this policy, does insure the life of Frederick B. Wells, of Minneapolis, county of Hennepin, and State of Minnesota, herein called the insured, in the amount of five thousand dollars, and promises to pay, at its home office in Worcester, said amount to Mary D. Wells, wife of the insured, if then living, otherwise to the executors, administrators, or assigns of the insured, upon satisfactory proof of the death of the said insured, the unpaid premiums, if any, for the balance of the policy year then entered upon, and any other indebtedness on account of this policy being first deducted therefrom.

This policy is issued and accepted subject to the benefits, privileges, and conditions specified on the second and third pages hereof, which are hereby made a part of this contract, and in lieu of policy number 100921 hereinbefore mentioned. In all nonforfeiture provisions it shall be considered as though it had been issued October 1st, A. D. 1907, and shall be incontestable two years after that
149 date, provided the premiums shall be paid as agreed, or shall have been paid as agreed, and the agreement as to military and naval service be not violated.

In witness whereof the said company has, by its president, vice president, and secretary, executed this contract at Worcester, Massachusetts, this twenty-seventh day of October, one thousand nine hundred and eleven.

(Illegible signature), *President.*
A. G. Bulloch, *Vice President.*
D. W. Carter, *Secretary.*

Ordinary life policy, annual dividend plan.

Issued in lieu of number 100921.

(Policy no. 100921 Ex. was issued in exchange for an earlier policy of the same number held by the insured. It contains the

usual standard provisions relating to benefits, privileges, and conditions of settlement, together with appropriate tables showing installment values, cash surrender and loan values, and values in paid-up and extended insurance, all of which are omitted as immaterial. Policy no. 100921 Ex. contains no clause or provision pertaining to or authorizing the insured to change the beneficiary.)

(Application of the insured for policy no. 100921 and application for exchange of policy are omitted as immaterial.)

(Original)

State Mutual Life Assurance Company of Worcester, Mass.

Absolute assignment of policy

For value received, we do hereby assign, transfer, and set over, absolutely, unto Mary D. Wells, of Minneapolis, in the State of Minnesota, all our right, title, and interest in and to the policy of life assurance issued by the State Mutual Life Assurance Company, of Worcester, Mass., upon the life of Frederick B. Wells, of Minneapolis, in the State of Minnesota, for the sum of five thousand no hundred dollars, and numbered 100921 Ex., with absolutely all privilege, benefit, and advantage secured thereby, or to be had or derived therefrom, and subject to all the conditions therein contained; hereby giving the said Mary D. Wells full power and
150 authority to collect the proceeds thereof at maturity or to surrender the same for its cash value; and to give her receipt therefor, which receipt we expressly agree shall be binding upon us, our heirs, executors, administrators, and assigns. It is understood and agreed, however, that any distribution of surplus may be applied to any payment of premiums on this policy, and that the said company shall be discharged from any further liability to either the insured, or assignee, for surplus so applied.

It is hereby declared that no proceedings in bankruptcy are pending against the maker or makers of this assignment.

If it should appear that this assignment is made upon any trust, the company shall not be liable to see to the application of any payment hereunder, and may rely upon the sole signature of the assignee to any receipt, release, or waiver, or to any transfer or other instrument to whomsoever made purporting to effect this assignment or any rights thereunder.

In witness whereof we hereunto set our hands and seals this twenty-fifth day of October, A. D. 1921.

FREDERICK B. WELLS. [L.S.]
MARY D. WELLS. [L.S.]
——— ———. [L.S.]

Witness:
NORMA E. DART.
H. R. GOLDING.
——— ———.

STATE OF MINNESOTA, *County of Hennepin, ss:*

On this twenty-fifth day of October, A.D. 1921, before me personally came Frederick B. Wells and Mary D. Wells, to me known, and known to me to be the individual described in and who executed the foregoing assignment, and acknowledged the same to be their free act and deed and made oath to their full age.

W. F. GRENELL,
W. F. GRENELL.
Notary Public, Hennepin County, Minn.

My commission expires Oct. 26, 1927.

Received and duplicate filed at the home office of the company at Worcester this 29th day of October 1921, assuming no responsibility, however, as to its validity.

STATE MUTUAL LIFE ASSURANCE COMPANY,
By W. T. MITCHELL, *Asst. Secretary.*

151 NOTICE.—The rules of the company require that assignments of policies issued by it shall be made in duplicate; that both copies shall be sent to the home office, the duplicate to be there retained and the original returned.

The interest of a minor cannot be assigned except by a duly appointed guardian, and a certificate showing appointment must be filed with the company.

(Original)

State Mutual Life Assurance Company, of Worcester, Massachusetts

Discharge of assignment

Having received full satisfaction for the indebtedness secured by the assignment of policy no. 100921 Ex on the life of Frederick B. Wells, I do hereby relinquish all my right, title, interest, and claim in and to said policy and discharge said assignment.

Witness my hand and seal this 14th day of Feb., A.D. 1924.

MARY D. WELLS. [L.S.]
By F. B. WELLS, Atty. in fact. [L.S.]

Witness:
ROY A. LATHROP.
_____.
_____.

STATE OF MINNESOTA,
County of Hennepin, ss:

On this 14th day of Feb., A.D. 1924, before me personally came F. B. Wells, attorney in fact for Mary D. Wells, to me known, and

known to me to be the individual described in, and who executed the foregoing discharge, and acknowledged the same to be his free act and deed.

ROY A. LATHROP,
Notary Public.
ROY A. LATHROP,
Notary Public, Hennepin County, Minn.

My commission expires May 16, 1927.

Received and recorded the above discharge at the office of the company, Mar. 26, 1924.

By W. T. MITCHELL, *Asst. Secretary.*

152 (Original)

State Mutual Life Assurance Company, of Worcester, Mass.

Absolute assignment of policy

For value received, we do hereby assign, transfer, and set over, absolutely, unto Minneapolis Trust Co. as trustee, of Minneapolis, in the State of Minnesota, all our right, title, and interest in and to the policy of life assurance issued by the State Mutual L'fe Assurance Company, of Worcester, Mass., upon the life of Frederick B. Wells, of Minneapolis, in the State of Minnesota, for the sum of five thousand no hundred dollars, and numbered 100921 Ex. with absolutely all privilege, benefit, and advantage secured thereby, or to be had or derived therefrom, and subject to all the conditions therein contained; hereby giving the said Minneapolis Trust Co., trustee, full power and authority to collect the proceeds thereof at maturity or to surrender the same for its cash value; and to give their receipt therefor, which receipt we expressly agree shall be binding upon our heirs, executors, administrators, and assigns. It is understood and agreed, however, that any distribution of surplus may be applied to any payment of premiums on this policy, and that the said company shall be discharged from any further liability to either the insured, or assignee, for surplus so applied.

It is hereby declared that no proceedings in bankruptcy are pending against the maker or makers of this assignment.

If it should appear that this assignment is made upon any trust, the company shall not be liable to see to the application of any payment hereunder, and may rely upon the sole signature of the assignee to any receipt, release, or waiver, or to any transfer or other instrument to whomsoever made purporting to effect this assignment or any rights thereunder.

In witness whereof we hereunto set our hands and seals this 14th day of Feb., A.D. 1924.

FREDERICK B. WELLS. [L.S.]
MARY D. WELLS. [L.S.]
By F. B. WELLS, *Atty.*

Witness:
ROY A. LATHROP.
——— ———.
——— ———.

153 STATE OF MINNESOTA, *County of Hennepin, ss:*

On this 14th day of Feb., A.D. 1924, before me personally came Frederick B. Wells, to me known, and known to me to be the individual described in, and who executed the foregoing assignment, and acknowledged the same to be his free act and deed and made oath to his full age.

ROY A. LATHROP,
Notary Public.
ROY A. LATHROP,
Notary Public, Hennepin County, Minn.

My commission expires May 16, 1927.

Received and duplicate filed at the home office of the company at Worcester, this ——— day of Mar. 26, 1924, 191, assuming no responsibility, however, as to its validity.

STATE MUTUAL LIFE ASSURANCE COMPANY,
By W. T. MITCHELL, *Asst. Secretary.*

NOTICE.—The rules of the company require that assignments of policies issued by it shall be made in duplicate; that both copies shall be sent to the home office, the duplicate to be there retained and the original returned.

The interest of a minor cannot be assigned except by a duly appointed guardian, and a certificate showing appointment must be filed with the company.

The company's name was changed on December 29th, 1922, to Provident Mutual Life Insurance Company, of Philadelphia.

No. 181596

Age 39. Life policy payable at death. Continuous yearly premiums. Yearly cash dividend

The Provident Life and Trust Company, of Philadelphia, in consideration of the representations made in the application for this policy, which are hereby made a part of this contract, and of the payment of one hundred and forty-six 00/100 dollars, receipt of which is hereby acknowledged, and payment of the yearly premium of one hundred and forty-six 00/100 dollars on or before the twenty-
154 second day of eleventh month in every year hereafter during the continuance of this policy, does insure the life of Fred-

erick B. Wells, of Minneapolis, Hennepin County, Minnesota, herein called the insured, in the amount of five thousand dollars for the term of his natural life, and upon receipt of due written proof of the death of the insured during the continuance of this policy, promises to pay at its office in the city of Philadelphia, the amount of said insurance less any indebtedness hereon to the company and any unpaid portion of the premium for the then current policy year, to his wife, Mary Drew Wells, if living; otherwise, to his executors, administrators, or assigns, without right reserved to the insured to change the beneficiary.

Change of beneficiary. If the right to change the beneficiary has been reserved to the insured, he or she may, if of full age, at any time during the continuance of this policy, change and successively change the beneficiary hereunder, whether original or substituted without the consent of the beneficiary, provided that the interest of any beneficiary shall be subject to the right of any assignee of said policy. The insured may, however, declare the designation of any beneficiary to be irrevocable. During the lifetime of any irrevocably designated beneficiary the insured shall not have the right to revoke or change the designation of that beneficiary without the written consent of said beneficiary filed with the company. If any beneficiary, revocable or irrevocable, dies before the insured, the interest of such beneficiary shall vest in the insured unless otherwise specifically provided. Every change of beneficiary or change from revocable to irrevocable designation must be made by written direction of the insured and filed with the company at its home office accompanied by this policy, and will take effect only when endorsed on this policy by the company.

The beneficiary is the person named in or endorsed on this policy as the person to whom the amount insured is payable. An assignee is the person to whom this policy may have been lawfully transferred by an instrument other than a designation or change of beneficiary as aforesaid.

(Policy no. 181596 further contains the usual standard provisions relating to payment of premiums, incontestability, payment of dividends, assignments, reinstatement, loans, and usual nonfor-
155 feiture provisions, together with tables showing cash and loan values and values in paid-up and extended term insurance, all of which are omitted as immaterial.)

(Policy no. 181596 was issued in exchange for a former term policy no. 97548, dated May 22, 1902.)

Endorsed on the margin of the policy is the notation: The company hereby endorses on this policy that the beneficiary is revocably changed to the executors, administrators, or assigns of the insured.

Executed by Provident Mutual Life Insurance Company of Philadelphia 8 month 22 1923.

R.S. No. 110. Countersigned (Illegible) Registrar.

(Application of the insured for policy no. 97548 and the application for exchange are omitted as immaterial.)

Assignment

For value received, I hereby transfer, assign, and set over unto Minneapolis Trust Company, trustee, of 115 South Fifth Street,
Street and no.
Minneapolis, Minnesota, and—Executors, administrators, and assigns,
If corporation, strike out "executors, administrators" and insert "successors.")
City or town State
all My right, title and interest in policy no. 181596, dated November 22d, 1911, issued by Provident Mutual Life Insurance Company of Philadelphia on the life of Frederick Brown Wells, together with all rights, privileges, and benefits to be derived therefrom and from any supplementary contract for benefits in event of total and permanent disability or any other supplementary contract that may be attached thereto, hereby giving and granting unto the said assignee full power and authority to surrender said policy to the company at any time and to receive and receipt for the surrender value thereof, together with the further full power and authority to receive from the company all sums whatsoever which may become payable under said policy, whether for dividends or shares of surplus, capital sum insured, or otherwise howsoever, and to receipt therefor.

This assignment is made under and subject to all advances or loans, if any, heretofore made by the company on account of said policy, together with interest thereon.

156 It is hereby certified and declared that no proceedings in bankruptcy are pending against any person or party executing this assignment.

Witness my hand and seal, this 25th day of June 1923.

FREDERICK B. WELLS. [SEAL]
——— ———. [SEAL]

Signed, sealed, and delivered in presence of—
BLANCHE LOVE.
W. F. GRENELL.

Note

The signature must be witnessed by two disinterested subscribing witnesses, and the assignment must be acknowledged, using the forms of acknowledgment on back hereof, before a notary public or other officer duly qualified to take acknowledgments of deeds, and certified by him under his official seal.

No assignment shall be of any force or effect unless made in writing and filed with the company at its home office. The company assumes no responsibility as to the validity of any assignment, and the receipt and recording thereof by the company shall be deemed only an acknowledgment of notice of its alleged execution and shall not be taken as an admission of the genuineness of the signature of the assignor nor the validity of the assignee's claims thereunder nor the insurable interest of the assignee.

The company was founded in 1865 as the Provident Life and Trust Company of Philadelphia and its name was changed on December 29, 1922 to Provident Mutual Life Insurance Company of Philadelphia.

(Acknowledgments on reverse side.)

Individual or partnership acknowledgment

STATE OF MINNESOTA, *County of Hennepin*, *ss:*

On this twenty-fifth day of June 1923, before me, the subscriber, a resident of the State of Minnesota, residing at Minneapolis, duly qualified to take acknowledgments of deeds, personally appeared Frederick B. Wells known to me to be the person who executed the within or foregoing instrument, and acknowledged the same to be his act and deed.

157 Witness my hand and official seal the day and year last above written.

W. F. GRENELL,

[SEAL] *Notary Public, Hennepin County, Minn.*

My commission expires Oct. 26, 1927.

This policy provides indemnity for loss of life, limb, sight, or time by accidental means, to the extent herein provided.

The Aetna Life Insurance Company, accident and liability department, of Hartford, Connecticut, hereby insures the person named

Paramount accident policy

Principal sum, $30,000.00. Weekly indemnity, $100.00

as applicant in the copy of the application for this policy endorsed hereon, subject to the provisions, conditions, and limitations herein contained, against loss resulting directly and independently of all other causes, from bodily injuries effected during the term of this policy solely through accidental means as follows:

(The remainder of accident policy no. PA 19553 is on the standard form and identical in all respects to similar accident insurance policy of the Aetna Life Insurance Company printed above in full as part of petitioner's exhibit no. 4 [marginal] p. 138, and is omitted here as immaterial.)

Request for change of beneficiary having been executed by the insured, as provided in standard provision no. 13 hereof, the beneficiary under this policy, from and after noon of Aug. 18, 1923, is Minneapolis Trust Co., trustee, related to the insured as—and not the beneficiary named in copy of application endorsed hereon.

AETNA LIFE INSURANCE COMPANY,
J. M. PARKER, Jr., *Secretary.*

(Application of the insured for accident policy no. PA 19553 is omitted here as immaterial.)

158 This policy provides indemnity for loss of time, loss of sight, dismemberment, and death, caused by accidental means, as herein limited and provided.

Standard Accident Insurance Company,[8] of Detroit, Michigan, incorporated 1884

In consideration of the representations contained in the application, copy of which is indorsed hereon and made a part hereof, and of the premium of one hundred twenty and no/100 dollars, hereby insures Frederick B. Wells (hereinafter called the insured), whose occupation is grain dealer, vice president, executive supervision office and traveling duties, for the term of 12 calendar months from noon, standard time, of the tenth day of August 1927, against loss resulting from bodily injuries effected directly, exclusively and independently of all other causes through accidental means, except when intentionally self-inflicted while sane or insane, or sustained by the insured while insane, subject to all conditions and limitations hereinafter contained:

Principal sum thirty thousand and no/100 dollars ($30,000.00).

Weekly indemnity one hundred and no/100 dollars ($100.00).

(Standard Accident Insurance Company policy no. 159R-55208 is in the usual form of standard insurance policies and the remaining portions of the policy, which are substantially similar in its provisions and schedules to accident insurance policies printed in full as part of petitioner's exhibit #4, are omitted as immaterial.)

(Application of the insured for policy no. 159R55208, also omitted as immaterial, directed that in case of death by accident the proceeds of the policy be paid to the Minneapolis Trust Company, trustee.)

159 [Clerk's certificate to foregoing transcript omitted in printing.]

160 SUPREME COURT OF THE UNITED STATES

Order allowing certiorari

Filed March 27, 1933

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Eighth Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

(Endorsed:) Enter Attorney General. File no. 37489. U.S. Circuit Court of Appeals, Eighth Circuit. Term no. 792. David Burnet, Commissioner of Internal Revenue, petitioner, vs. Frederick D. Wells. Petition for a writ of certiorari and exhibit thereto. Filed March 20, 1933. File no. 37489.

[8] (On August 10, 1927, this policy was substituted by the trustees for Connecticut General Life Insurance Company, policy no. DWB 5168, referred to in the trust instrument.)

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[redacted]

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In the Supreme Court of the United States

OCTOBER TERM, 1932

No. —

DAVID BURNET, COMMISSIONER OF INTERNAL REVENUE, petitioner

v.

FREDERICK B. WELLS

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT

The Solicitor General, on behalf of the Commissioner of Internal Revenue, prays that a writ of certiorari issue to review the judgment of the Circuit Court of Appeals for the Eighth Circuit entered February 4, 1933.

OPINIONS BELOW

The opinion of the Board of Tax Appeals (R. 57–63) is reported in 19 B. T. A. 1213. The opinion of the Circuit Court of Appeals has not yet been reported.

This Court's dismissal of a certificate in this case on May 2, 1932, is reported in 286 U. S. 529.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered February 4, 1933. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Whether Section 219 (h) of the Revenue Acts of 1924 and 1926 is unconstitutional when applied to the income of irrevocable trusts created before 1924.

STATUTES INVOLVED

Section 219 (h) of the Revenue Act of 1924, c. 234, 43 Stat. 253, provides as follows (U. S. C., Title 26, Sec. 960):

> Where any part of the income of a trust may, in the discretion of the grantor of the trust, either alone or in conjunction with any person not a beneficiary of the trust, be distributed to the grantor or be held or accumulated for future distribution to him, or where any part of the income of a trust is or may be applied to the payment of premiums upon policies of insurance on the life of the grantor (except policies of insurance irrevocably payable for the purposes and in the manner specified in paragraph (10) of subdivision (a) of section 214), such part of the income of the trust shall be included in computing the net income of the grantor.

Section 219 (h) of the Revenue Act of 1926, c. 27, 44 Stat. 9 (U. S. C. App., Title 26, Sec. 960), is the same as Section 219 (h) of the Revenue Act of 1924, quoted above.

STATEMENT

On December 30, 1922, Frederick B. Wells created three trusts, referred to as Trusts Nos. 1, 2, and 3. On August 6, 1923, he created two additional trusts, referred to as Trusts Nos. 4 and 5. All were in terms irrevocable. (R. 47; Ex. 2–5, 14–19, 29–31, 45–48, 122–124.)[1]

By the provisions of Trust No. 1 Wells transferred certain shares of stock to the Minneapolis Trust Company as trustee. The trustee had fairly broad powers as to management, sale of assets, etc. The income of the trust property was to be used first to pay the net annual premium upon a life-insurance policy on Wells' life. The excess income was to be accumulated until an amount sufficient to pay one additional premium had been reserved. Any additional income was, in the discretion of the trustee, to be paid to Wells' daughter.

[1] On February 23, 1932, the Circuit Court of Appeals certified to this Court certain questions with respect to this case. The certificate was dismissed on May 2, 1932. *Wells* v. *Commissioner*, 286 U. S. 529. Thereafter the Circuit Court of Appeals granted the present petitioner's motion for reargument and directed that a supplemental record be furnished including the text of the provisions of the five trust agreements and the insurance policies involved. The abbreviation "Ex." refers to material in this supplemental volume of exhibits.

Upon the death of Wells the trustee was to collect the amount of the insurance policy and purchase from the Wells estate securities amounting to $100,000 at their appraised value. After Wells' death the income from the trust estate was to be paid to his daughter during her life. Upon the death of his daughter the trust was to cease and determine and the trustee was to pay over the corpus as the daughter might appoint by her will; in default of appointment or issue, then in equal parts to Wells' sons (who were named), when the youngest or the youngest survivor reached the age of twenty-five years. (Ex. 2–5.)

The other trusts were similar except for different limitations and different methods of making the policies payable to the trustee. It is deemed unnecessary to point out these differences in detail for the purpose of this petition. In Trusts Nos. 2 and 3 (Ex. 14–19, 29–31) the corpus of the trusts was payable at Wells' death to the Minneapolis Foundation, a corporation organized for charitable and benevolent purposes in trust to the rector, wardens and vestrymen of St. Marks Church, Minneapolis, Minnesota, for the sole purpose of carrying on the work of the Wells Memorial, a definite charity conducted by the church. It was provided that if the accumulation of income provided in the living trust should for any reason be declared void, the accumulation should be paid over to the Minneapolis Foundation for its own uses and purposes,

but should either the living trust or the perpetual trust be declared void as a trust then the trust estate should revert to Wells, if living, and if not, to his heirs, executors, administrators or assigns. (Ex. 17–18, 31.) Under Trusts Nos. 4 and 5 (Ex. 45–48, 122–124), the income from the trusts was to be used to pay premiums on certain accident policies as well as life insurance policies. The benefits under the accident policies, other than the death benefits, remained payable to Wells.

In auditing the taxpayer's returns for the years 1924, 1925, and 1926, the Commissioner included as taxable income of Wells so much of the income of the trusts as was used to pay the premiums on insurance policies taken out on Wells' life. (R. 56–57.) The Board of Tax Appeals sustained the Commissioner and determined deficiencies for the years 1924, 1925, and 1926.

On a petition for review filed by the taxpayer, the Circuit Court of Appeals held that only so much of the income of the trusts as was used to pay premiums on accident policies might be taxed to Wells and that the balance of the income might not be. The court held that Section 219 (h) of the Revenue Acts of 1924 and 1926 was intended to apply to irrevocable trusts created prior to the enactment of the Revenue Act of 1924 but that as so construed they were unconstitutional when applied to the trusts involved in this case.

SPECIFICATION OF ERRORS

The Circuit Court of Appeals erred:

1. In holding that the payment of the life insurance premiums by the trustees resulted in no benefit to Wells or his estate.

2. In holding that Section 219 (h) of the Revenue Acts of 1924 and 1926 is unconstitutional.

3. In holding that the effect of Section 219 (h) as applied to the facts in this case is to impose a tax upon that which was not Wells' income, in violation of the Sixteenth Amendment to the Constitution.

4. In holding that to impose a tax upon the settlor of an irrevocable trust created prior to the passage of the Revenue Act of 1924 with respect to the income of the trust used to pay premiums on insurance on his life constitutes a violation of the Fifth Amendment to the Constitution.

5. In reversing the decision of the Board of Tax Appeals.

REASONS FOR GRANTING THE WRIT

1. Section 219 (h) of the Revenue Acts of 1924 and 1926 (*supra*, p. 2) was adopted for the purpose of preventing evasion of taxes by the creation of trusts the income of which is used to meet an expense ordinarily incurred by the individual himself, that is, insurance on his life. S. Rep. No. 398, 68th Cong., 1st Sess., pp. 25–26. In so far as the Circuit Court of Appeals has held that the provision is unconstitutional in that it taxes an indi-

vidual upon that which is not his income, it apparently makes no distinction between trusts created prior to the enactment of the Revenue Act of 1924 and those created thereafter. If permitted to stand, it defeats the purpose of Congress as to trusts created with notice of the provision as well as those created without notice of it and permits the escape from higher tax rates of a large amount of income. Hence, the question is an important one. It has been raised in a number of cases pending before the Board of Tax Appeals and the Circuit Courts of Appeals.

2. There is a direct conflict between the decision in this case and the reasoning of the Circuit Court of Appeals for the Third Circuit in the case of *du Pont* v. *Commissioner*, decided January 6, 1933, upholding the constitutionality of Section 219 (h) of the Revenue Acts of 1924 and 1926 as to trusts created prior to the enactment of the statute. The court below distinguished the *du Pont case* on the ground that the trusts were made irrevocable only for a period of three years from September 18, 1923, renewable at the settlor's option and actually renewed for two three-year periods after that time. But the decision of the court in the *du Pont case* was not rested on this narrow ground but on the broad one that the settlor was profiting by the arrangement by seeing to it that the income was applied to a purpose which he desired and required.

3. Coincidentally with the filing of this petition, the taxpayer in the *du Pont case* is filing a petition

for certiorari to review the decision of the Circuit Court of Appeals for the Third Circuit in that case. These two cases present a conflict of opinion between two Circuit Courts of Appeal upon an important constitutional question the decision of which seriously affects the administration of the revenue and substantial rights of a large number of taxpayers. It is therefore important that both cases be reviewed in this Court, and accordingly the Government will not oppose the granting of a writ in the *du Pont case*.

Wherefore, it is respectfully submitted that the petition should be granted.

THOMAS D. THACHER,
Solicitor General.

MARCH, 1933.

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PETITIONERS' BRIEF

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In the Supreme Court of the United States

OCTOBER TERM, 1932

No. 792

DAVID BURNET, COMMISSIONER OF INTERNAL REVENUE, petitioner

v.

FREDERICK B. WELLS

ON A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT

BRIEF FOR THE PETITIONER

OPINIONS BELOW

The opinion of the Board of Tax Appeals (R. 45–50) is reported in 19 B.T.A. 1213. The opinion of the Circuit Court of Appeals (R. 56–83) is reported in 63 F. (2d) 425.

This Court's dismissal of a certificate in this case on May 2, 1932, is reported in 286 U.S. 529.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered February 7, 1933 (R. 83–84). The petition for a writ of certiorari was filed March 20,

1933, and was granted March 27, 1933. (R. 210). The jurisdiction of this Court rests on Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Whether Section 219 (h) of the Revenue Acts of 1924 and 1926 is unconstitutional when applied to the income of five trusts created before 1924 by the taxpayer in this case.

STATUTES AND REGULATIONS INVOLVED

The statutes and regulations involved are set forth in Appendix A, *infra*, pp. 32–37.

STATEMENT

On December 30, 1922, Frederick B. Wells created three trusts, referred to as Trusts Nos. 1, 2, and 3. On August 6, 1923, he created two additional trusts, referred to as Trusts Nos. 4 and 5. All were in terms irrevocable (R. 37; 86–88, 95–99, 107–109, 120–123, 181–183).[1]

By the provisions of Trust No. 1 Wells transferred certain shares of stock to the Minneapolis Trust Company as trustee. The trustee had fairly

[1] On February 23, 1932, the Circuit Court of Appeals certified to this Court certain questions with respect to this case. The certificate was dismissed on May 2, 1932. *Wells* v. *Commissioner*, 286 U.S. 529. Thereafter the Circuit Court of Appeals granted the present petitioner's motion for reargument and directed that a supplemental record be furnished including the text of the five trust agreements and the insurance policies involved.

broad powers as to management, sale of assets, etc. The income of the trust property was to be used first to pay the net annual premium upon a life insurance policy on Wells' life. The excess income was to be accumulated until an amount sufficient to pay one additional premium had been reserved. Any additional income was, in the discretion of the trustee, to be paid to Wells' daughter. Upon the death of Wells the trustee was to collect the amount of the insurance policy and purchase from the Wells estate securities amounting to $100,000 at their appraised value. After Wells' death the income from the trust estate was to be paid to his daughter during her life. Upon the death of his daughter the trust was to cease and determine and the trustee was to pay over the corpus as the daughter might appoint by her will; in default of appointment or issue, then in equal parts to Wells' sons (who were named), when the youngest or the youngest survivor reached the age of twenty-five years (R. 86–88).

The other trusts were similar except for different limitations and different methods of making the policies payable to the trustee, and it is not deemed necessary to point out these differences in detail here. Under Trusts Nos. 4 and 5 (R. 120–123, 181–183) the income from the trusts was to be used to pay premiums on certain accident policies as well as life-insurance policies. The benefits

under the accident policies, other than the death benefits, remained payable to Wells.[2]

In auditing the taxpayer's returns for the years 1924, 1925, and 1926, the Commissioner included as taxable income of Wells so much of the income of the trusts as was used to pay the premiums on insurance policies taken out on Wells' life (R. 44–45). The Board of Tax Appeals sustained the Commissioner and determined deficiencies for the years 1924, 1925, and 1926 (R. 50–51).

On a petiton for review filed by the taxpayer, the Circuit Court of Appeals held that only so much of the income of the trusts as was used to pay premiums on accident policies might be taxed to Wells and that the balance of the income might not be. The court held that Section 219 (h) of the Revenue Acts of 1924 and 1926 was intended to apply to irrevocable trusts created prior to the enactment of the Revenue Act of 1924 but that as so construed the provision was unconstitutional when applied to income of the trusts involved in this case (R. 56–83).

SPECIFICATION OF ERRORS

The Circuit Court of Appeals erred:

1. In holding that the payment of the life insurance premiums by the trustees resulted in no benefit to Wells or his estate.

2. In holding that Section 219 (h) of the Revenue Acts of 1924 and 1926 is unconstitutional.

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[2] Further facts relating to the detailed provisions of the trusts and insurance policies are stated in Point III (*infra*, pp. 23–31), where they become material.

3. In holding that the effect of Section 219 (h) as applied to the facts in this case is to impose a tax upon that which was not Wells' income, in violation of the Sixteenth Amendment to the Constitution.

4. In holding that to impose a tax upon the settlor of an irrevocable trust created prior to the passage of the Revenue Act of 1924 with respect to the income of the trust used to pay premiums on insurance on his life constitutes a violation of the Fifth Amendment to the Constitution.

5. In reversing the decision of the Board of Tax Appeals.

SUMMARY OF ARGUMENT

I

Section 219 (h) of the Revenue Acts of 1924 and 1926 (*infra*, p. 34) is plainly applicable to irrevocable trusts. We contend that the provision is not unconstitutional when so applied.

The statute seeks to tax nothing which is not income. We think it a reasonable exercise of the taxing power of Congress under the Sixteenth Amendment and therefore not unconstitutional under the due process clause of the Fifth Amendment. It is not enough for the settlor to show that he had no legal or equitable interest in the corpus of the trust or the income from it, and the respondent does not sustain his position by showing that he could not personally consume the income or principle of the trust and could exercise no control over the trusts beyond that which he impressed on them

by creating them. The question is not one of "title," "ownership" or actual "control," but whether it was a reasonable exercise of legislative power for Congress to tax to the settlor so much of the trust income as is used to pay premiums on policies of insurance on his own life.

The disposition which Wells made was in essence testamentary. It took final effect at his death and because of his death. The trust property could, therefore, be taxed by an appropriate statute as a part of Wells' estate on his death.

There is income in this case which Congress may tax, and that income is being used during Wells' life pursuant to his directions and in execution of his plan for the management of property which will pass to persons designated by him as the beneficaries of his bounty only upon his death. In providing that so much of this income as is used to pay the premiums upon policies of insurance on the settlor's life may be taxed to the settlor, we submit that Congress has acted reasonably and with a view to wise and equitable distribution of the burden of taxation.

Section 219 (h) was adopted by Congress as a means to prevent evasion, and it is similar in purpose and effect to other closely related provisions which have been uniformly upheld by this Court.

II

Section 219 (h) of the Revenue Acts of 1924 and 1926 is applicable to irrevocable trusts created be-

fore the enactment of the Revenue Act of 1924 and is not unconstitutional when so applied. *Reinecke* v. *Smith,* No. 601, October Term, 1932, decided April 10, 1933; *Porter* v. *Commissioner,* No. 466, October Term, 1932, decided March 13, 1933.

III

There are additional reasons peculiar to the particular trusts here involved which tend to support the validity of the tax. In the three largest trusts it was provided that on the death of Wells the proceeds of the insurance policies should be used to purchase securities from his estate. This did not constitute a mere convenience. It obviated the necessity of selling securities of the estate at a forced sale when they might bring but a fraction of their true value. Moreover, it provided a hedge to the settlor's estate against depreciation, and a fund from which taxes and other expenses could be paid without loss to the estate through the depreciation of securities.

Under Trusts Nos. 4 and 5 Wells retained reversionary interests in the trust property, and he retained his interest in some of the insurance policies under these trusts.

There is room to doubt whether funded insurance trusts are valid under the laws of Minnesota. If they are invalid, Wells could terminate them at any time and would be taxable on their income. Moreover, "charitable" trusts were invalid in Minnesota when these trusts were created, and for

this reason Wells could have terminated Trusts Nos. 2 and 3.

ARGUMENT

Section 219 (h) of the Revenue Act of 1924 (*infra*, p. 34) provides that—

> where any part of the income of a trust is or may be applied to the payment of premiums upon policies of insurance on the life of the grantor (except policies of insurance irrevocably payable for the purposes and in the manner specified in paragraph (10) of subdivision (a) of section 214 [relating to charitable purposes]), such part of the income of the trust shall be included in computing the net income of the grantor.

The same provision is contained in Section 219 (h) of the Revenue Act of 1926.

So far as the construction of this provision is concerned, it is plain that the court below was correct in holding (R. 60–61) that it is applicable to irrevocable trusts. Apart from the fact that the language of the provision and its legislative history (see Appendix B, *infra*, pp. 38–39) suggest no other construction, Section 219 (h) would be without significance if it were limited to revocable trusts, for revocable trusts are dealt with in Section 219 (g) of the statutes. Compare the construction of Section 302 (d) of the Revenue Act of 1924 in *Porter v. Commissioner*, No. 466, October Term, 1932, decided March 13, 1933.

I

SECTION 219 (h) OF THE REVENUE ACTS OF 1924 AND 1926 IS NOT UNCONSTITUTIONAL WHEN APPLIED TO INCOME OF AN IRREVOCABLE TRUST

The question in this case is not whether the amounts upon which the taxes are imposed are income within the meaning of the Sixteenth Amendment. The items involved are dividends from domestic corporations, and interest, both of which are clearly income. The only question is whether so much of this income as is involved in this case may be taxed to the settlor of the trusts. There is no effort to collect from the settlor a tax on all of the income of the trusts. The statute relates only to "such part of the income of the trust" as "is or may be applied to the payment of premiums upon policies of insurance on the life of the grantor."

As the statute seeks to tax nothing which is not income there can be no objection to its constitutionality as a direct tax not within the Sixteenth Amendment. The only other ground on which the constitutionality of the statute is attacked is that it operates to deprive the settlor of the trust of his property " without due process of law," contrary to the provisions of the Fifth Amendment of the Constitution. We submit that the statute is constitutional as a reasonable exercise of the taxing power of Congress.

The Fifth Amendment does not require Congress to levy the tax upon the beneficial owner of

the income. *Lucas* v. *Earl,* 281 U.S. 111; *Burnet* v. *Leininger,* 285 U.S. 136. Compare *Poe* v. *Seaborn,* 282 U.S. 101, 109, where the Court held that a statute should be construed to tax income to its owner, "in the absence of further definition by Congress." Congress may, in a proper case, levy the income tax upon one who has no legal title to the income or the corpus producing it and who did not in fact receive the income, and had no power to reclaim the income which had been paid when the taxing statute was passed. *Corliss* v. *Bowers,* 281 U.S. 376. This is true even though the settlor's power over the income is at all times subject to a veto power in another over whom the settlor has no legal control. *Reinecke* v. *Smith,* No. 601, October Term, 1932, decided April 10, 1933. Finally, it is established that the settlor may be taxed although he has retained no beneficial interest in the property and no power to revest the property in himself. *Porter* v. *Commissioner,* No. 466, October Term, 1932, decided March 13, 1933.[3]

It is, therefore, not enough for the settlor to show he had no legal or equitable interest in the corpus of the trust or the income from it. The taxpayer was accountable to another for the in-

[3] The *Porter case* involved an estate tax rather than an income tax. But it is applicable here because "the same considerations as to ownership and control affect the power to impose a tax on the transfer of the corpus and upon the income." *Reinecke* v. *Smith,* No. 601, October Term, 1932, decided April 10, 1933.

come involved in *Lucas* v. *Earl* and *Burnet* v. *Leininger,* and he had no "title" to that involved in *Corliss* v. *Bowers.* And the respondent does not sustain his position by showing that he could not personally consume the income or principal of the trusts and could exercise no control over the trusts beyond that which he impressed on them by creating them. In *Porter* v. *Commissioner* the taxpayer had no possibility of retaking for himself either the income or the principal of the trust. In cases governed by *Reinecke* v. *Smith,* control in fact over the trust is immaterial; if the person whose consent is required refuses to comply with the settlor's wishes, he is nevertheless taxable on the income although he in fact has no control over either the trust property or income. The question presented is not one of "title" or "ownership" or actual "control," but whether the circumstances are such that it cannot be said to be unreasonable for Congress to tax to the settlor so much of the trust income as is used to pay premiums on policies of insurance on his own life.

Doubtless, a man may escape taxation on income from property by giving it to another without reservation of benefits to himself from the use of the property; but we submit that Congress may properly say that nothing less than an outright gift will be sufficient to achieve that result. Compare *Marshall* v. *Commissioner,* 57 F. (2d) 633 (C.C.A. 6th), certiorari denied, 287 U.S. 621. Wells did not

make an outright unqualified gift of the property the income from which is in question here. Cf. *Basket* v. *Hassell*, 107 U.S. 602; *Burnet* v. *Guggenheim*, No. 283, October Term, 1932, decided February 6, 1933. Instead he chose the trust device and withheld from the beneficiaries all right to either principal or income of the trusts (so far as is involved in this case) until his death. In so doing he impressed upon the trust property his will and his purpose.

The disposition thus made was in essence testamentary. It takes final effect at Wells' death and because of his death. Until his death the trust property used to pay premiums on insurance on his life is set apart for that single purpose, and it is freed of that restriction only at his death. Not until his death do the beneficiaries obtain any right to receive the property or its income or its proceeds. Death is, therefore, the controlling event intended by the grantor of the trusts as precedent to their final effect. The trust property involved in this case could, therefore, be taxed by an appropriate statute as a part of Wells' estate.[4] If this conclusion be correct it follows that the tax imposed on the income of the property by Section 219 (h) is valid

[4] The fact that the transfers were irrevocable does not require a contrary conclusion. *Klein* v. *United States*, 283 U.S. 231; *Tyler* v. *United States*, 281 U.S. 497. Since the question here discussed is one of constitutional power and not one of statutory construction, cases such as *May* v. *Heiner*, 281 U.S. 238, are inapplicable.

upon the principle applied in *Reinecke* v. *Smith*, *supra*, p. 10.

So far as income devoted to the payment of premiums was concerned, no direct benefit was conferred upon the beneficiaries of the trusts until Wells' death. The income was not paid to them nor at their direction. On the contrary, the purposes served by the trusts were Wells' purposes. The trustee performed functions prescribed by Wells and achieved results desired by Wells. The trusts existed because of the control which Wells had exercised over the trust property, a control that continued so long as Wells lived, for until his death the trust property here involved could be used only as he had directed. Plainly, there is income in this case which Congress may tax (cf. *Atlantic Coast Line* v. *Daughton*, 262 U.S. 413, 420), and that income is being used during Wells' life pursuant to his directions and in execution of his plan for the management of property which will pass to persons designated by him as the beneficiaries of his bounty only upon his death.

This Court has decided that the payment of one's obligations by another constitutes taxable income to him whose obligation is discharged. In *Old Colony Trust Co.* v. *Commissioner*, 279 U.S. 716, the principle was applied to the payment of income taxes of an employee by an employer. In *United States* v. *Boston & Maine R.R. Co.*, 279 U.S. 732, it was held that the payment of income taxes of a lessor

by a lessee constituted income to the lessor. In *United States* v. *Mahoning Coal R. Co.,* 51 F. (2d) 208 (C.C.A. 6th), certiorari denied, 285 U.S. 559, it was held that this principle applied even though the lessee was under no obligation to pay the taxes. Similarly, it has been held that the payment of premiums by an employer on a policy of insurance on the life of the employee constitutes additional compensation to the employee even though the wife of the employee is named as the beneficiary. *Adams* v. *Commissioner,* 18 B.T.A. 381; *Danforth* v. *Commissioner,* 18 B.T.A. 1221.

We think these cases indicate that the intimate relation between Wells and the income from the trusts which was used to pay the premiums on insurance on his own life was sufficient to sustain the tax as neither arbitrary, unreasonable, nor capricious. It is true that the obligation of the settlor to provide for his dependents by means of insurance was not a legal obligation. But to make such provision for his dependents was nevertheless an obligation both social and moral, and commonly recognized as such by a man of the settlor's means. The fact that the obligation may not have been legally enforceable is immaterial here, for the settlor accepted the obligation by creating the trusts now in question and thus discharged the obligation he fully recognized. Many of the average person's expenditures are not made pursuant to legally enforceable obligations. But it is clear that

if another should make them for him the gain is the same whether or not the payment is strictly in discharge of a debt.[5]

The payment of the insurance premiums by the trustee out of the trust income, then, did confer a benefit upon the settlor of the trusts, measured by the amount of the premiums paid; for that payment operated to discharge an obligation from which the settlor wished to be relieved by providing for the payment of premiums on policies of insurance on his own life for the benefit of his dependents who should survive him.

We think that Congress was justified in assuming that where trusts of this sort are not created for philanthropic purposes, they are created in lieu of other provisions for the support of dependents and that the payment of the premiums from the trust income is a payment for the settlor's benefit as truly as if he had retained the trust property set apart

[5] In many States, real property taxes are not personal obligations of the property owner, yet if such an owner should place securities in trust for the purpose of using the income to pay his taxes it is plain that the payment would be income to him just as truly as if a debt to a third party enforceable by action against the debtor personally were so discharged. It is no answer to say that in the case of real property taxes nonpayment results in a lien on the property. The lien and its enforcement are merely incidental to forfeiture of the property for nonpayment, and the situation is thus legally no different from that here, where the result of nonpayment of the premium would be the forfeiture of the policies. In each situation a thing of value is lost unless the payment is made.

for the sole purpose of paying the premiums, and himself had paid the premiums from the income of the property. The settlor of the trust had a direct, personal, and pecuniary interest in keeping the insurance policies alive and derived an economic benefit from the discharge of the obligation to keep them alive which he imposed on the trustee.[6]

If Wells had retained the securities, collected the dividends, and used them to pay the premiums which he obviously intended to pay when he took out the policies, he would have been required to report the full amount of income and would not be entitled to a deduction for the premiums paid, since such expenses are regarded as personal expenses which are not deductible under Section 215 (a) (1) of the Revenue Acts of 1924 and 1926 (*infra*, p. 32). If Wells' contentions in this case are sustained he has accomplished, by indirect means, that which the law would not permit him to accomplish directly.

The net result of the trust arrangements which were set up in this case was that the trustee paid the premiums which the settlor himself would have

[6] This principle was applied in *Matter of Hartmann*, 133 Misc. 428. A testator provided in his will for the payment of premiums on insurance policies on the life of his son-in-law. It was held that the transfer tax on these sums was properly assessed against the son-in-law. The court said (p. 431): "this insurance meant just so much of the expenses of the household of the insured and beneficiary covered as they might themselves otherwise expend on insurance. It is a saving to the insured of the amount of the premiums which he might otherwise be required to pay, * * *."

been required to pay if he wished to keep the policies in force. The transfer of the contracts to the trustee was not for the purpose of abandoning the policies and giving up the insurance. The stocks were turned over to make sure that the premiums would be met. And when the trustee acted in performance of his obligation he was not paying premiums for himself but for someone else, and that person was the taxpayer, by whose will and direction alone the trustee was empowered to act at all. It cannot be said that the income was not the taxpayer's income merely because it did not pass through his hands.

Congress has provided that in the case of certain trusts where the income is not immediately distributable, the tax shall be paid by the trustee out of the trust income; but it need not tax all trust income in this manner. A trust is not an entity which Congress must recognize against its will. Private trusts have no existence as such apart from the persons whose interests they involve. Even if a trust is regarded as a "legal entity" it would not follow that the respondent's position here is correct. Congress has frequently provided that the separate entity, both of corporations and of individuals, shall be disregarded for tax purposes. Thus, Section 240 of the Revenue Act of 1918 required affiliated corporations to make a consolidated return regardless of their separate legal existence. Sections 203 and

204 of the Revenue Acts of 1924 and 1926, and similar provisions of other Acts, have disregarded the separate legal existence of corporations in certain circumstances for the purpose of determining gain or loss on the sale of property. *Newman, Saunders & Co.* v. *United States,* 36 F. (2d) 1009 (C.Cls.), certiorari denied, 281 U.S. 760; *Osburn California Corp.* v. *Welch,* 39 F. (2d) 41 (C.C.A. 9th), certiorari denied, 282 U.S. 850; *Perthur Holding Corp.* v. *Commissioner,* 61 F. (2d) 785, certiorari denied, March 13, 1933.[7] Nor are provisions such as these confined to corporations. The separate existence of individuals is disregarded for some purposes by the revenue laws, and these provisions have been upheld by this Court. *Taft* v. *Bowers,* 278 U.S. 470; *Cooper* v. *United States,* 280 U.S. 409. Cf. *Corliss* v. *Bowers,* 281 U.S. 376; *Reinecke* v. *Smith, supra.*

Provisions such as those just referred to are designed to equalize the burdens of taxation and to prevent evasion. Section 219 (h), we submit, has a similar purpose and similar justification. Paraphrasing the language of this Court in *Burnet* v. *Leininger,* 285 U.S. 136, we submit that the Congress, having the authority to tax the net income derived from property held in trust, could impose

[7] Cf. *Gann* v. *Commissioner,* 61 F. (2d) 201 (C.C.A. 7th), certiorari denied, 287 U.S. 650. See also Section 331 of the Revenue Act of 1918, involved in *Monarch Electric & Wire Co.* v. *Commissioner,* 38 F. (2d) 417 (C.C.A. 7th).

the liability upon the trust directly, as it did in Section 219 (h) of the Revenue Act of 1924 or upon the individual whose purposes were served by the trust, as in the section here involved.[8]

Section 219 (h) was adopted by Congress as a means to prevent evasion. (See Appendix B, *infra*, pp. 38–39. The opinion thus expressed by Congress was plainly well founded. The present case is not an isolated one. It is pointed out in the taxpayer's petition for certiorari in *DuPont* v. *Commissioner*, No. 791, October Term, 1932 (p. 5), that many cases of this type are now pending, and that over $4,000,000,000 was placed in insurance trusts during the years 1923 to 1930.

Section 219 (h) is similar in origin, purpose, and effect to other closely related provisions which have been uniformly upheld by this Court. *Corliss* v. *Bowers*, 281 U.S. 376; *Reinecke* v. *Smith*, No. 601, October Term, 1932, decided April 10, 1933; *Taft* v. *Bowers*, 278 U.S. 470; *Cooper* v. *United States*, 280 U.S. 409; *United States* v. *Phellis*, 257 U.S. 156. This Court has held repeatedly that the presumption is in favor of the constitutional validity of a statute, and that a statute will not be held unconstitutional unless its invalidity appears beyond a

[8] The language used in the *Leininger case* was (p. 142): "The Congress, having the authority to tax the net income of partnerships, could impose the liability upon the partnership directly, as it did under the Revenue Act of 1917 (40 Stat. 300, 303), or upon the 'individuals carrying on business in partnership', as in the statutes here involved."

reasonable doubt. See *Hylton* v. *United States,* 3 Dall. 171, 174; *Fletcher* v. *Peck,* 6 Cranch 87, 128; *Ogden* v. *Saunders,* 12 Wheat. 213, 217; *Legal Tender cases,* 12 Wall. 457, 531; *Sinking-Fund Cases,* 99 U.S. 700, 718; *Trade-Mark Cases,* 100 U.S. 82, 96; *Mugler* v. *Kansas,* 123 U.S. 623, 661; *Nichol* v. *Ames,* 173 U.S. 509, 514–515; *Buttfield* v. *Stranahan,* 192 U.S. 470, 492; *Graves* v. *Minnesota,* 272 U.S. 425, 428; *Whitney* v. *California,* 274 U.S. 357, 371. In view of the fact that Congress has found the provision in question necessary "to stop this evasion" (Senate Report No. 398, 68th Cong., 1st Sess., p. 25), Section 219 (h) in the Revenue Acts of 1924 and 1926 is a necessary and proper law for carrying into execution the power of Congress to lay and collect taxes on incomes, within Article I, Section 8, of the Constitution.

The present case is clearly distinguishable from *Hoeper* v. *Tax Commission,* 284 U.S. 206, where this Court held that a State could not require a husband to pay taxes on the income of his wife which he never owned, controlled, or had the right to have expended for his benefit. The distinction stated by this Court in *Reinecke* v. *Smith, supra,* is equally applicable here:

> The case is plainly distinguishable from *Hoeper* v. *Tax Commission,* 284 U.S. 206, on which respondents rely, for there the at-

tempt was to tax income arising from property always owned by one other than the taxpayer. He had never had title to or control over either the property or the income from it.

In the court below, the respondents contended that Section 219 (h) cannot be sustained as a gift tax, and *Heiner* v. *Donnan,* 285 U.S. 312, was relied on. With this contention we are in complete accord. The Government does not argue and has never argued that the statute in question may be sustained as a gift tax. The tax is obviously a tax on income and it is on this basis only that it may be sustained. We contend that the relation between Wells and the income used to pay premiums on insurance on his own life was not so remote that it was in any sense arbitrary or capricious to provide that Wells should pay the tax. There was no other person who, could with equal justice, be taxed. The beneficiaries did not receive the income. To impose the tax upon the trust estate would merely permit evasion of surtaxes by an artificial division of income because a part of the settlor's property was set aside to serve particular purposes which he wished to serve. In such a situation it was but simple justice to impose the tax upon him whose directions controlled the use to be made of the income so long as no other person received it or controlled its disposition.

II

SECTION 219 (h) OF THE REVENUE ACTS OF 1924 AND 1926 IS APPLICABLE TO IRREVOCABLE TRUSTS CREATED BEFORE THE ENACTMENT OF THE REVENUE ACT OF 1924, AND IS NOT UNCONSTITUTIONAL WHEN SO APPLIED

The only income involved in this case is income received during the years 1924, 1925, and 1926. Such income was plainly subject to tax under the provisions of the Revenue Acts of 1924 and 1926. It is immaterial that the trusts involved were created prior to the enactment of the taxing statue. Since the income arose during the tax years to which the Revenue Acts of 1924 and 1926 are applicable, there is no question of retroactivity involved.

The correctness of this proposition, we believe, both as a matter of the construction of the statute and of its constitutionality, is sufficiently demonstrated by the decisions of this Court in *Corliss* v. *Bowers*, 281 U.S. 376, and *Reinecke* v. *Smith*, No. 601, October Term, 1932, decided April 10, 1933, in both of which Section 219(g) of the Revenue Act of 1924 was held properly applicable to the income of trusts received in 1924 although the trusts had been created in 1922. See also *Porter* v. *Commissioner*, No. 466, October Term, 1932, decided March 13, 1933. This Court's decision in the *Smith case* is directly applicable:

> Nor do we think the act has such a retroactive effect as to render its requirements arbitrary within the principle announced as to estate and gift taxes in *Nichols* v. *Coolidge*,

274 U.S. 531; *Untermyer* v. *Anderson,* 276 U.S. 440, and *Blodgett* v. *Holden,* 275 U.S. 142. In those cases the issue was the validity of a tax on a transaction consummated before the enactment of the statute authorizing the exaction. In the present case the subject of the tax is not the creation of the trusts or the transfer of the corpus from the grantor to the trustees, but the income of the trusts which accrued after January 1, 1924, the effective date of the Revenue Act of 1924. Although the act was passed June 2, 1924, the imposition of the tax on income received or accrued from the beginning of the year has been held unobjectionable. *Cooper* v. *United States,* 280 U.S. 409, 411. Compare *Fawcus Machine Co.* v. *United States,* 282 U.S. 375, 379.

III

CONSIDERATIONS RELATING TO THE PARTICULAR TRUSTS INVOLVED IN THIS CASE

We contend that the arguments already advanced in this brief are sufficient to show the propriety of the tax involved in this case. If we are correct in this, it will be unnecessary for the Court to consider the arguments set out in this point of the brief. But if the arguments so far advanced are not sufficient to sustain the Government's position, we present here additional reasons peculiar to the particular trusts involved in this case which we believe support, at least in part, the validity of the tax.

A

As to the three largest trusts involved in this case, there was a definite and material benefit reserved to the settlor. In Trusts Nos. 1, 4, and 5, it was provided that on the death of Wells the proceeds of the insurance policies should be used to purchase securities from his estate (R. 87, 121–122, 182–183). In other words, the income from these trusts, which went to pay premiums on the insurance policies, was being used to accumulate a cash fund available to his estate immediately upon the death of the settlor. This did not constitute a mere convenience. The provision was of real pecuniary value to the settlor's estate, for it obviated *pro tanto* the necessity of selling securities of the estate at a forced sale when they might bring but a fraction of their true value. It was expressly provided that the securities were to be purchased at their "appraised value" (R. 87, 121, 182). Many items which might be contained in an estate have no market value; there is no ready sale for them. It is a matter of common knowledge that executors are often forced to sell assets for whatever they will bring in order to raise cash with which to pay taxes and other debts of the estate and that life insurance is often made payable to the insured's estate to prevent loss from disadvantageous sales of securities. Such losses were provided against by the settlor's "insurance fund" to provide cash with which to buy assets from the estate at their "appraised value."

Furthermore, securities of an estate are appraised as of the date of death, and the provision for the purchase of such securities at their appraised value effectively protects the estate, to the extent of the insurance, against depreciation of the securities after the decedent's death. Such protection, as the experience of recent years has disclosed, is of the most vital importance in preserving an estate subjected to heavy death duties based upon value at death, which in times of falling security prices have been known to consume the realizable depreciated value of entire estates. Thus the provision was of most substantial pecuniary value to the settlor's estate, not only in obviating the necessity of selling securities at a sacrifice but in providing a hedge against depreciation of the appraised value of the securities and a fund from which taxes and other expenses of administration could be paid without loss to the estate through the depreciation of securities.

B

Under Trust No. 4, the trustee was directed to collect the proceeds of the life insurance policies at Wells' death, and in the event of his death by accident, the proceeds of those policies, and use them, with any unexpended income, in the purchase of securities from his estate at their appraised value. Upon the death of each of his three sons or his daughter, a portion of the corpus was to be distributed to such person or persons as were entitled

to receive it by the laws of descent in Minnesota. Wells would take under those laws if his children died intestate without issue or spouse. Mason's Minnesota Statutes (1927), Sections 8720, 8726. Thus Wells or his estate may ultimately receive the entire corpus of this trust, both the original corpus and the proceeds of the policies. Cf. *Klein* v. *United States,* 283 U.S. 231.

Policies Nos. 181485 and 181486 of the Provident Life and Trust Company of Philadelphia were payable to Mary D. Wells, if living, otherwise to the settlor's executors, administrators, or assigns, with the right reserved to change the beneficiary, and providing that if any beneficiary, revocably or irrevocably designated, dies before the insured, the interest of the beneficiary shall vest in the insured unless otherwise specifically provided (R. 150–151, 155–156). Wells made one assignment of these policies to his wife, which was subsequently released. On June 25, 1923, he purported to assign all of his right, title, and interest in them to the Minneapolis Trust Company as trustee (R. 154). There is an endorsement on these policies, however, showing that the beneficiary was revocably changed to his estate in August 1923, that is, subsequent to the assignment (R. 151, 156). It must be assumed that this was done with the concurrence of the trustee (assignee), as otherwise it would be ineffectual. See *N.Y. Mutual Life Ins. Co.* v. *Armstrong,* 117 U.S. 591; *Grigsby* v. *Russell,* 222 U.S. 149; *Insurance Co.* v. *Kimball,* 119 Me. 571: *Hul-*

sey v. *Cotton States Fertilizer Co.,* 45 F. (2d) 388 (C.C.A. 5th). Hence the insured's estate is the beneficiary under these policies, subject perhaps to the right of the trustee to surrender them for cash.

Trust No. 5 contains the same provisions for the disposition of the corpus as is contained in Trust No. 4 and Wells has the same reversionary interest in that trust.

Provident Life Policy No. 181596 was identical with policy No. 181485 of that company just discussed under Trust No. 4 except that the right to change the beneficiary was not reserved. It was provided, however, that if any beneficiary, revocable or irrevocable, dies before the insured, the interest of such beneficiary shall vest in the insured unless otherwise specifically provided. On June 25, 1923, Wells executed an assignment to the Minneapolis Trust Company (R. 208) similar to his assignment in No. 181485, but subsequent to that time, that is on August 22, 1923, the beneficiary was revocably changed to his estate (R. 207).

As Mary D. Wells, the beneficiary, was still living as late as February 14, 1924 (R. 149), Wells does not appear to have had the power to execute the assignment of June 25, 1923. *Allis* v. *Ware,* 28 Minn. 166; *Wallace* v. *Mutual Benefit Life Ins. Co.,* 97 Minn. 27; 2 Cooley, *Briefs on the Law of Insurance,* 1090. Moreover, after the assignment was made the beneficiary was revocably changed to Wells' estate on August 22, 1923. If the assign-

ment was ineffective, it is clear that neither Wells nor the trustee had the right to change the beneficiary, that the wife has all the interest in the policy. If, however, Wells' wife subsequently died (it appears that Wells married Helen R. Golding in 1926, R. 115) the beneficial interest in the policy is in Wells under the provision that if the beneficiary should predecease him he would acquire her interest. If, however, both the assignment and the change of beneficiary are effective, Wells' estate is the beneficiary. In either event, therefore, the estate of Wells retains the beneficial interest in the policies, except so far as the trustee has the right under the trust agreement to surrender them for cash.

C

Two other arguments were advanced before the court below and were there decided against the Government. Although we do not concede the correctness of the decision below, the arguments are presented here in summary only, since they involve questions of the law of Minnesota.

(1) There is considerable doubt whether funded insurance trusts are valid under the laws of Minnesota. That State does not have the common-law system of trusts. Its legislature has erected a statutory system of personal property trusts, and the permissible purposes of such trusts are limited by enumeration. Mason's Minn. Stat. (1927), Sec. 8090 (5) and (6); *Shanahan* v. *Kelly*, 88 Minn. 202,

supra; Congdon v. *Congdon,* 160 Minn. 343. The purpose for which Wells created the trusts now in question, that is, to pay premiums on policies of accident and life insurance, is not one of the specified purposes. Since we have found no case upholding the validity of such trusts under the law of Minnesota, it cannot certainly be said that such trusts are valid. It should also be noted that it is by no means clear that funded insurance trusts are lawful accumulations, although *Congdon* v. *Congdon, supra,* apparently places no limitations on accumulations of personal property. See Hanna, *Some Legal Aspects of Life Insurance Trusts,* 78 U. of Pa. Law Rev. 346, 360–373; Bogert, *Funded Insurance Trusts and the Rule against Accumulations,* 9 Corn. Law Quart. 113; *The Legality of a Funded Insurance Trust under the Statutes against Accumulations,* 27 Col. Law Rev. 197. If the trusts were invalid either because not within the permissible purposes of personal property trusts or as unlawful accumulations, Wells of course was entitled to terminate them at any time, and would therefore be taxable on their income. *Corliss* v. *Bowers,* 281 U.S. 376.

(2) At the time of the creation of the trusts in question, "charitable" trusts were invalid in Minnesota. *Shanahan* v. *Kelly,* 88 Minn. 202; *Bemis* v. *Northwestern Trust Co.,* 117 Minn. 409; *In re Ford's Estate,* 144 Minn. 454; Fraser, *Suspension of the Power of Alienation,* 9 Minn. Law Rev. 314,

321, 323–324. A statute of 1927 made "charitable" trusts valid, Mason's Minn. Stat. (1927), Sec. 8090–1, but there is nothing to show an intent to depart from the usual rule that statutes have prospective effect only, and there is much to show the contrary in Section 8090–4.

Under Trusts Nos. 2 and 3 it was provided that upon Wells' death the corpus of the trusts should pass directly to the Minneapolis Foundation in trust for the purpose of carrying on the work of the Wells Memorial, a charity conducted by St. Marks Church of Minneapolis (R. 97–98, 109). These trusts also provided that if *either* the living (funded insurance) trust or the perpetual (charitable) trust be declared void as a trust then "the trust estate shall revert to myself, if living; otherwise to my heirs, executors, administrators, or assigns" (R. 98–99, 109). Under the Minnesota statutes cited above, we submit that the disposition of the corpus of the trust on Wells' death was invalid, since it provided for a charitable trust. If this contention is correct, it rested with Wells to determine whether and when he would take possession of the trust property, including the premium income taxed by the Commissioner, and there can be no objection to taxing him upon such income.

The court below in holding the charitable trust valid relied on *Y.M.C.A.* v. *Horn,* 120 Minn. 404. But the decision in the *Y.M.C.A. case* merely rec-

ognizes that property may be given to a charitable corporation for use within its corporate purposes, and that there is no objection to a trust for such a corporation. Such a trust is not void for want of certainty in its beneficiaries; it has a definite beneficiary, the corporation. In the present case the income is to be paid to the rector, wardens, and vestrymen of St. Marks Church "to be used by said corporation for the sole purpose of carrying on the work of the Wells Memorial, a definite charity conducted by the said Church Corporation." It does not appear that the Wells Memorial was within the corporate purposes of St. Marks Church. Charitable trusts have been held invalid in Minnesota since the decision in the *Y.M.C.A. case*. See *Bogart* v. *Taylor*, 144 Minn. 454.

CONCLUSION

The decision of the Circuit Court of Appeals is erroneous and should be reversed.

Respectfully submitted.

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APPENDIX A

STATUTES AND REGULATIONS INVOLVED

REVENUE ACT OF 1924, C. 234, 43 STAT. 253, 264, 265, 271, 275

SEC. 210. (a) In lieu of the tax imposed by section 210 of the Revenue Act of 1921, there shall be levied, collected, and paid for each taxable year upon the net income of every individual (except as provided in subdivision (b) of this section) a normal tax * * * (U.S.C., Title 26, Sec. 951).

SEC. 211. (a) In lieu of the tax imposed by section 211 of the Revenue Act of 1921, but in addition to the normal tax imposed by section 210 of this Act, there shall be levied, collected, and paid for each taxable year upon the net income of every individual a surtax as follows: * * * (U.S.C., Title 26, Sec. 952).

SEC. 215. (a) In computing net income no deduction shall in any case be allowed in respect of—

(1) Personal, living, or family expenses:

* * * * *

(U.S.C., Title 26, Sec. 956.)

SEC. 219. (a) The tax imposed by Parts I and II of this title shall apply to the income of estates or of any kind of property held in trusts, including—

(1) Income accumulated in trust for the benefit of unborn or unascertained persons or persons with contingent interests, and income accumulated or held for future distribution under the terms of the will or trust;

(2) Income which is to be distributed currently by the fiduciary to the beneficiaries, and income collected by a guardian of an infant which is to be held or distributed as the court may direct;

(3) Income received by estates of deceased persons during the period of administration or settlement of the estate; and

(4) Income which, in the discretion of the fiduciary, may be either distributed to the beneficiaries or accumulated.

(b) Except as otherwise provided in subdivisions (g) and (h), the tax shall be computed upon the net income of the estate or trust, and shall be paid by the fiduciary. The net income of the estate or trust shall be computed in the same manner and on the same basis as provided in section 212, except that—

* * * * *

(2) There shall be allowed as an additional deduction in computing the net income of the estate or trust the amount of the income of the estate or trust for its taxable year which is to be distributed currently by the fiduciary to the beneficiaries, and the amount of the income collected by a guardian of an infant which is to be held or distributed as the court may direct, but the amount so allowed as a deduction shall be included in computing the net income of the beneficiaries whether distributed to them or not. Any amount allowed as a deduction under this paragraph shall not be allowed as a deduction under paragraph (3) in the same or any succeeding taxable year:

(3) In the case of income received by estates of deceased persons during the period of administra-

tion or settlement of the estate, and in the case of income which, in the discretion of the fiduciary, may be either distributed to the beneficiary or accumulated, there shall be allowed as an additional deduction in computing the net income of the estate or trust the amount of the income of the estate or trust for its taxable year which is properly paid or credited during such year to any legatee, heir, or beneficiary, but the amount so allowed as a deduction shall be included in computing the net income of the legatee, heir, or beneficiary.

* * * * *

(g) Where the grantor of a trust has, at any time during the taxable year, either alone or in conjunction with any person not a beneficiary of the trust, the power to revest in himself title to any part of the corpus of the trust, then the income of such part of the trust for such taxable year shall be included in computing the net income of the grantor.

(h) Where any part of the income of a trust may, in the discretion of the grantor of the trust, either alone or in conjunction with any person not a beneficiary of the trust, be distributed to the grantor or be held or accumulated for future distribution to him, or where any part of the income of a trust is or may be applied to the payment of premiums upon policies of insurance on the life of the grantor (except policies of insurance irrevocably payable for the purposes and in the manner specified in paragraph (10) of subdivision (a) of section 214), such part of the income of the trust shall be included in computing the net income of the grantor. (U.S.C., Title 26, Sec. 960.)

REVENUE ACT OF 1926, C. 27, 44 STAT. 9, 21, 28, 32

SEC. 210. (a) In lieu of the tax imposed by section 210 of the Revenue Act of 1924, there shall be levied, collected, and paid for each taxable year upon the net income of every individual (except as provided in subdivision (b) of this section) a normal tax * * * (U.S.C.App., Title 26, Sec. 951).

SEC. 211. (a) In lieu of the tax imposed by section 211 of the Revenue Act of 1924, but in addition to the normal tax imposed by section 210 of this Act, there shall be levied, collected, and paid for each taxable year upon the net income of every individual a surtax as follows: * * * (U.S.C. App., Title 26, Sec. 952).

Sections 215 (a) (1) (U.S.C.App., Title 26, Sec. 956), and 219 (a), (b) (2) and (3), (g) and (h) (U.S.C.App., Title 26, Sec. 960) of the Revenue Act of 1926 are identical with the corresponding provisions of the Revenue Act of 1924 above quoted.

TREASURY REGULATIONS 65, PROMULGATED UNDER THE REVENUE ACT OF 1924

ART. 341. *Estates and trusts.*—In general, the income of a trust for the taxable year which is to be distributed to the beneficiaries must be returned by and will be taxed to the respective beneficiaries, but the income of a trust which is to be accumulated or held for future distribution, whether consisting of ordinary income or gain from the sale of assets included in the corpus of the trust, must be returned by and will be taxed to the trustee. The exception to this general rule is with respect to the income of a trust revocable by the grantor, and the

income of a trust which may be distributed to the grantor or used to pay the premiums upon policies of insurance on his life, which income, whether or not distributed, must be returned by and will be taxed to the grantor of the trust. (See article 347.)

See section 225 and articles 421 and 423 with reference to fiduciary returns, and article 294 with reference to deductions.

* * * * *

ART. 347. *Income of trusts taxable to grantor.*— In the case of certain trusts which are in whole or in part subject to revocation by the grantor, or which are for the benefit of the grantor, the income of the trust is to be included in computing the net income of the grantor. The income of such trusts must be so included, whether or not the trust was created before the enactment of this Act. The cases in which the income of the trust is to be included, in whole or in part, in computing the net income of the grantor are as follows:

(1) Where the grantor of the trust has, at any time during the taxable year, either alone or in conjunction with a person not a beneficiary of the trust, the power to revest in himself title to any part of the corpus of the trust, the income of such part of the trust for that taxable year shall be included in computing the net income of the grantor. The grantor shall include in his income the entire gross income of such part of the trust, and shall be entitled to such deductions with reference to such income as he would have been entitled to if the trust had not been created. Where the grantor relinquishes during the taxable year his power to revest in himself title to the corpus of the trust, the income of the trust shall be taxable to the grantor only for the period during which he had such power.

(2) Where any part of the income of the trust may, in the discretion of the grantor of the trust, either alone or in conjunction with any person not a beneficiary of the trust, be distributed to the grantor or be held or accumulated for future distribution to him; and

(3) Where any part of the income of the trust is or may be applied to the payment of premiums upon policies of insurance on the life of the grantor, other than policies irrevocably payable for the purposes and in the manner specified in section 214 (a) (10), such part of the income of the trust shall be included in computing the net income of the grantor.

The term "beneficiary" as used in this article includes any person entitled to an interest in the income or the principal of a trust, but does not include one having merely a nominal interest in the income or principal.

Article 341 and Article 347 of Treasury Regulations 69 promulgated under the Revenue Act of 1926 are identical in all material respects.

APPENDIX B

LEGISLATIVE HISTORY OF SECTION 219 (H) OF THE REVENUE ACT OF 1924

The provisions contained in Section 219 (h) of the Revenue Act of 1924 had not been included in earlier revenue laws. When the bill which became the Revenue Act of 1924 was introduced in the House of Representatives, the report of the Committee on Ways and Means explained the purpose of the provisions of Section 219 as follows (House Report No. 179, 68th Cong., 1st Sess., p. 21):

> This section has been rewritten in order to secure clarity and to prevent the evasion of taxes by means of estates and trusts. The changes made are quite important.
>
> It is provided in the section that in the case of a trust where the trustee has the discretion to distribute or not, the income is taxed to the beneficiary if distributed and to the trustee if not distributed.
>
> Subdivision (g) of this section provides that where the grantor of a trust reserves the right to change the trust in favor of himself the income is taxed to the grantor.
>
> Subdivision (h) of this section provides that the income of a trust which may be distributed to the grantor or which may be used for the payment of premiums upon policies of insurance on his life shall be included in the gross income of the grantor. Trusts have been used to evade taxes by means of provisions allowing the distribution of the income to the grantor or its use for his benefit. The purpose of this subdivision of the bill is to stop this evasion.

The report of the Senate Committee on Finance (Senate Report No. 398, 68th Cong., 1st Sess., pp. 25–26), expressed the same purpose as to the prevention of evasion of taxes by estates and trusts, made use of the expression "revocable trust" in discussing Section 219 (g), and as to Section 219 (h) contained the following (pp. 25–26):

> (3) Subdivision (h) of this section provides that the income of a trust which may be distributed to the grantor or which may be used for the payment of premiums upon policies of insurance on his life shall be included in the gross income of the grantor. Trusts have been used to evade taxes by means of provisions allowing the distribution of the income to the grantor or its use for his benefit. The purpose of this subdivision of the bill is to stop this evasion.
>
> The provisions of the House bill have been altered to exclude from taxation to the grantor of a trust income thereof used to pay premiums on insurance policies which are irrevocably payable to the benevolent organizations described in section 214 (a) (10). A trust of this kind is a proper method of providing for a gift to such organizations, and since the income is being used for these benevolent purposes rather than for the grantor's personal benefit it should not be taxed to him.

U. S. GOVERNMENT PRINTING OFFICE: 1938

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CHARLES ELMORE

No. 792

In the Supreme Court of the United States.

OCTOBER TERM, 1932

No. ....

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

v.

FREDERICK B. WELLS,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT

MEMORANDUM FOR RESPONDENT

In the Supreme Court of the United States.

OCTOBER TERM, 1932

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COMMISSIONER OF INTERNAL REVENUE,
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Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT

MEMORANDUM FOR RESPONDENT

Counsel for the respondent in this case is also counsel for the petitioner in the case of *Irenee du Pont, Petitioner,* v. *Commissioner of Internal Revenue, Respondent,* No. ——, October Term 1932, and in that case a petition for certiorari is coincidentally being filed with the petition for certiorari in this case. It is the belief of counsel that these two cases present a conflict of decision on a question of constitutional law which necessarily will affect many taxpayers throughout the

country. Counsel believes that the writ should issue in each case and, therefore, does not oppose the petition in this case.

March, 1933

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CHARLES ELMORE CRO
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BRIEF FOR RESPONDENT

In the Supreme Court of the United States

OCTOBER TERM 1932

No. 792

DAVID BURNET,
COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

v.

FREDERICK B. WELLS

On a Writ of Certiorari to the United States Circuit Court of Appeals for the Eighth Circuit

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FREDERICK B. WELLS

On a Writ of Certiorari to the United States Circuit Court of Appeals for the Eighth Circuit

---

BRIEF FOR RESPONDENT

OPINIONS BELOW

The opinion of the Board of Tax Appeals (R. 45-50) is reported in 19 B. T. A. 1213. The opinion of the Circuit Court of Appeals (R. 56-83) is reported in 63 Fed. (2d) 425.

JURISDICTION

This Court is vested with jurisdiction under section 240(a) of the Judicial Code as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Whether section 219(h) of the Revenue Acts of 1924 and 1926 is unconstitutional as applied to a case where the grantor created an irrevocable trust for the payment of premiums on policies of insurance upon his life, and parted with all rights and benefits under such trust and under the insurance policies, prior to the enactment of said section of the Revenue Acts.

STATUTE INVOLVED

Part of section 219(h) of the Revenue Acts of 1924 and 1926:

> "* * * Where any part of the income of a trust is or may be applied to the payment of premiums upon policies of insurance on the life of the grantor * * * such part of the income of the trust shall be included in computing the net income of the grantor."[1]

STATEMENT

On December 30, 1922, Frederick B. Wells created three trusts, referred to as Trusts Nos. 1, 2 and 3. On August 6, 1923, he created two additional trusts, referred to as Trusts Nos. 4 and 5. All were in terms irrevocable. (R. 86-88, 95-99, 107-109, 120-123, 181-183.)

This was before the enactment of section 219(h) of the Revenue Act of 1924, or of any similar statute.

Under the terms of the trust indentures certain of

[1] Section 219(h) and other pertinent parts of section 219 are shown in full in the Appendix, pp. 36-37.

the income was to be paid by the trustee as premiums on policies of insurance on the life of the settlor. Prior to January 1, 1924, the settlor parted with all right, title and interest in the insurance policies.[1] In his income tax returns for 1924, 1925 and 1926, Mr. Wells did not report as his income any part of the income of the trusts used to pay premiums on the insurance policies. The Commissioner of Internal Revenue in auditing those returns added to Mr. Wells' income the amounts which had been paid by the trustee as premiums on the insurance policies. (R. 13-15, 23-25, 34-35.)

On review by the Board of Tax Appeals the action of the Commissioner was affirmed.[2]

Mr. Wells petitioned for review by the Circuit Court of Appeals for the Eighth Circuit. After argument the Circuit Court of Appeals on February 23, 1932, certified to this Court certain questions, as follows:

> Question 1. Does section 219(h) of the Revenue Acts of 1924 and 1926 apply to irrevocable trusts?
>
> Question 2. Is section 219(h) of the Revenue Acts of 1924 and 1926 constitutional as applied to irrevocable trusts created prior to the passage of the Revenue Act of 1924?
>
> Question 3. On the facts stated did the petitioner receive income arising under the trusts during the years 1924, 1925 and 1926?

---

[1] Except the right to disability benefits under certain accident insurance policies premiums on which were payable under Trusts Nos. 4 and 5.

[2] The deficiency for 1924 was increased by the Board on account of a clerical error discovered in the Commissioner's determination.

In their brief and on argument before this Court (April 27, 1932), counsel for the Government raised certain points as to the validity of the trusts and the ownership of the insurance policies, which had not been raised before the Board of Tax Appeals or before the Circuit Court of Appeals. This Court dismissed the certificate of the Circuit Court of Appeals on May 2, 1932. *Wells* v. *Commissioner,* 286 U. S. 529. Thereafter on motion of the Government, the Circuit Court of Appeals set the case for reargument and called for the exhibits which had been filed in the Board of Tax Appeals, in order to permit the Government to raise its new points.

On February 4, 1933, the Circuit Court of Appeals rendered an exhaustive opinion (R. 56-83; 63 Fed. (2d) 425-443) holding section 219(h) of the Revenue Acts of 1924 and 1926 unconstitutional when applied to the trusts under consideration (except that the Court held the income paid by the trustee as premiums on the accident policies, in which the settlor retained the right to disability benefits, properly taxable to the settlor.[1]) Accordingly, the Circuit Court of Appeals reversed the Board of Tax Appeals except as to the amounts of the accident insurance premiums.

This Court granted a writ of certiorari on petition of the Government on March 27, 1933.

The details of the provisions of the trust indentures and insurance policies and assignments thereof are set forth where pertinent in the argument below.

---

[1] Respondent concedes the correctness of the decision of the Circuit Court of Appeals in this respect.

SUMMARY OF ARGUMENT

Mr. Wells throughout the taxable years involved had no interest in the corpus or income of the trusts nor in the life insurance policies. Section 219(h) of the Revenue Acts of 1924 and 1926 is unconstitutional in attempting to tax Mr. Wells upon the income of the trusts, for Congress is limited by the Fifth Amendment to the Constitution in the same manner that state legislatures are limited by the Fourteenth Amendment. *Heiner* v. *Donnan,* 285 U. S. 312. And a state cannot tax one person on the income of another. *Hoeper* v. *Tax Commission of Wisconsin,* 284 U. S. 206. The situation is entirely different from that in *Reinecke* v. *Smith* (April 10, 1933) and *Porter* v. *Commissioner* (March 13, 1933) where the settlor retained power to revoke the trust or to completely revise it and make different disposition of the property, but is similar to *Reinecke* v. *Northern Trust Co., 278* U. S. 339, where the title having been put beyond the control of the settlor the property was no longer a part of his estate.

The capriciousness of the tax imposed by section 219(h) of the Revenue Acts of 1924 and 1926 is demonstrated in the Revenue Act of 1932 under which a gift tax is imposed upon the creator of such a trust as those involved in the case at bar and the same statute continues to tax him on the income of the property of which he made a complete gift.

Every decision relied on by the Government is readily distinguishable from the present case, for in every one of them the settlor could, had he so desired, have paid the tax out of the taxed income, while in our case the settlor had put it out of his power to do this before

the first enactment of section 219(h) or anything like it, and before the beginning of the taxable periods covered by the statutes.

This Court has upheld income taxes when levied against the earners of the income or the owners of the property which earned the income, against persons who had reserved the right to revest in themselves title to corpus or income or to control the income, but the present case is parallel to none of those situations.

The trusts here involved were in no sense testamentary. *Nichols* v. *Coolidge,* 274 U. S. 531, 540. And the trust property could not have been taxed as a part of Wells' estate. *Coolidge* v. *Long,* 282 U. S. 582; *Lewellyn* v. *Frick,* 268 U. S. 238. Accordingly, the income therefrom could not properly be taxed to Mr. Wells. *Reinecke* v. *Smith* (April 10, 1933). The fact that the purposes served by the trusts were the settlor's purposes does not render him taxable on the income of the trusts any more than Mr. Rockefeller is taxable on the income of the Rockefeller Foundation.

If one renders services or leases property in consideration of payments to be made to a third party, such payments constitute income properly taxable to the one rendering the services or owning the property, whether such person was under obligation to the third party or not. But a gift from B to A is not taxable as income to A, whether paid directly to A or in discharge of A's obligation to C. Accordingly, the taxes in *Old Colony Trust Co.* v. *Commissioner,* 279 U. S. 716; *Adams* v. *Commissioner,* 18 B. T. A. 381; and *Danforth* v. *Commissioner,* 18 B. T. A. 1221, were properly upheld because the taxpayer in each case had earned the income though it had been paid on his account to another,

rather than because an obligation of his was discharged. Similarly, in *United States* v. *Boston & Maine Railroad,* 279 U. S. 732, and *United States* v. *Mahoning Coal Railroad Co.,* 51 Fed. (2d) 208, the income was earned by the property of the lessor railroads and was therefore taxable to them although paid to a third party. In the present case the income was earned by the corpus, which is the property of the trustee and is accumulated for the benefit of persons other than the settlor. The income is not earned by property or efforts of the person to whom it is proposed to tax it.

The fact that the settlor has discharged a moral obligation by creating these trusts does not render him taxable on the income therefrom any more than if he had discharged his moral obligation by a direct gift to the beneficiaries.

There is no evasion in electing a method of managing one's affairs which will result in no tax liability. Congress is not at liberty to violate the Constitution in its effort to prevent such avoidance.

Since these trusts were created irrevocably before the effective date of the first statute, the subject thereof was no part of the estate of Mr. Wells. *Nichols* v. *Coolidge,* 274 U. S. 531, 542-3. And "the same considerations as to ownership and control affect the power to impose a tax on the transfer of the corpus and upon the income." *Reinecke* v. *Smith.*

The Government's contentions with respect to particular trusts, attempting to show that the settlor retained interests thereunder, are fully answered in the opinion of the Circuit Court of Appeals.

The decree of the Circuit Court of Appeals should be affirmed.

ARGUMENT

POINT I

Mr. Wells Throughout the Taxable Years Involved Had No Interest in the Corpus or Income of the Trusts Nor in the Life Insurance Policies.[1]

The deeds of trust are in the record. (R. 86-95, 107-120, 181.) They are summarized in the findings of the Board of Tax Appeals. (R. 37-41.) The Board of Tax Appeals in its opinion recognized (R. 48) "that petitioner by the trust indentures and by the assignments of insurance policies has parted with all rights to revest such property in himself." The Commissioner of Internal Revenue had made a similar finding (R. 14-15), saying: "The fact that the trust in the instant case was irrevocable and that the grantor was not and could not be a beneficiary under these life insurance policies does not justify the conclusion that the income of these trusts is not taxable to the grantor."

The Commissioner and the Board justified the tax against the settlor on the theory that, in spite of his lack of any legal interest in the corpus of the trusts or the life insurance policies, it was proper to tax him on the trust income by reason of some "moral" or "economic" benefit.

The arguments of the Government to the effect that the trusts were revocable and that the settlor retained property in the insurance policies are answered under Point IV, below.

---

[1] The taxability to the settlor of the premiums on the *accident* insurance policies, in which he retained an interest, is conceded. *cf.* pp. 3, 4, *supra.*

POINT II

As Applied to the Income of the Trusts Here Involved Section 219(h) of the Revenue Acts of 1924 and 1926 Is Unconstitutional.

(a) *As an income tax.*

The statute as applied by the Government imposes a tax upon Mr. Wells measured by income in which he has no property rights and over which he can exercise no control. This income is derived from a corpus in which Mr. Wells has no ownership, no power of disposition or appointment, no right to revest, no rights of any kind. The income is devoted to paying premiums on insurance policies which Mr. Wells does not own—in which he has parted with the rights to surrender, to pledge, to change beneficiaries and every other right he may have had.

Congress is limited by the Fifth Amendment to the Constitution in the same manner that the state legislatures are limited by the Fourteenth Amendment. *Heiner* v. *Donnan,* 285 U. S. 312. Accordingly Congress has no more power to tax Mr. Wells upon the income from property he has irrevocably given away than it has to tax him on the income from property he has sold or the income from property he never owned. As Mr. Justice Roberts wrote in *Hoeper* v. *Tax Commission of Wisconsin,* 284 U. S. 206, 215:

> "We have no doubt that, because of the fundamental conceptions which underlie our system, any attempt by a state to measure the tax on one per-

son's property or income by reference to the property or income of another is contrary to due process of law as guaranteed by the Fourteenth Amendment. That which is not in fact the taxpayer's income cannot be made such by calling it income." Compare Nichols v. Coolidge, 274 U. S. 531, 540.

Although *Knowlton* v. *Moore,* 178 U. S. 41, seems to have been modified by *Stebbins* v. *Riley,* 268 U. S. 137, we do not believe this Court will repudiate the following language from the earlier case:

> "But this is equivalent to saying that the principle underlying the asserted interpretation is that the house of A, which is worth only $1,000, may be taxed, but that the rate of tax is to be determined by attributing to A's house the value of B's house, which may be worth a hundredfold the amount. The gross inequalities which must inevitably result from the admission of this theory are readily illustrated."

With the same thought in mind, in *Hartman* v. *Greenhow,* 102 U. S. 672, which involved the validity of a statute requiring a tax on bonds to be deducted from coupons, which were detached and held by different owners, this Court said:

> "Surely it is not necessaary to argue that an act which requires the holder of one contract to pay the taxes levied upon another contract held by a stranger cannot be sustained. Such an act is not a legitimate exercise of the taxing power; it under-

takes to impose upon one the burden which should fall, if at all, upon another."

cf. *Rosenwald* v. *Commissioner,* 33 Fed. (2d) 423, cert. denied 280 U. S. 599.

(b) *As a gift tax.*

The Government concedes (Brief p. 21) that this tax cannot be sustained as a gift tax.

POINT III

The Capriciousness of the Tax Imposed by Section 219(h) of the Revenue Acts of 1924 and 1926 Is Demonstrated in the Revenue Act of 1932.

The Revenue Act of 1932 continues the tax imposed by section 219(h) of the Acts of 1924 and 1926 in the following language:

> "Sec. 167. Income for Benefit of Grantor.
> "(a) Where any part of the income of a trust—
> "(1) is, or in the discretion of the grantor or of any person not having a substantial adverse interest in the disposition of such part of the income may be, held or accumulated for future distribution to the grantor; or
> "(2) may, in the discretion of the grantor or of any person not having a substantial adverse interest in the disposition of such part of the income, be distributed to the grantor; or
> "(3) is * * * applied to the payment of premiums

upon policies of insurance on the life of the grantor * * *;

"then such part of the income of the trust shall be included in computing the net income of the grantor."

Section 501 of the Revenue Act of 1932 imposes a gift tax in the following language:

"(a) For the calendar year 1932 and each calendar year thereafter a tax, computed as provided in section 502, shall be imposed upon the transfer during such calendar year by any individual, resident or non-resident, of property by gift.

"(b) The tax shall apply whether the transfer is in trust or otherwise, whether the gift is direct or indirect, and whether the property is real or personal, tangible or intangible; * * *

"(c) The tax shall not apply to a transfer of property in trust where the power to revest in the donor title to such property is vested in the donor, either alone or in conjunction with any person not having a substantial adverse interest in the disposition of such property or the income therefrom, but the relinquishment or termination of such power (other than by the donor's death) shall be considered to be a transfer by the donor by gift of the property subject to such power, and any payment of the income therefrom to a beneficiary other than the donor shall be considered to be a transfer by the donor of such income by gift."

Congress, by taxing as gifts the creation of irrevocable trusts (without any exception for trusts to pay insurance premiums), recognizes the completeness of the transfer. By excepting revocable trusts from the

gift tax, it recognizes that incomplete transfers should not be taxed as gifts. In the case of a revocable trust it is consistent in taxing the income to the creator of the trust until such time as he makes the gift complete and ceases to be the owner (actual or potential) of the source of the income.

But in the case of a trust to pay insurance premiums, Congress taxes the grantor on a transfer by gift and then continues to tax him on the income of that gift as if no transfer had been made. It is submitted that this is certainly arbitrary and capricious and a denial of due process of law.

When an irrevocable trust is set up to pay insurance premiums on policies in which no interest is retained by the grantor, it is proper to tax the grantor upon the creation of such trust if Congress desires to impose a gift tax. But it is improper to tax the income of that trust to the grantor, for it is not his income. As was said by Mr. Justice Sutherland in *Heiner v. Donnan, supra*:

> "Such an exaction is not taxation but spoliation."

POINT IV

The Government's Argument Answered

(1) *The Constitutional question*

It may be true, as urged by the Government (Brief, pp. 9-10), that "The Fifth Amendment does not require Congress to levy the tax upon the beneficial owner of income." But this Court has never held that a person

could be taxed upon income unless he was the earner of the income, the owner of the principal from which the income was derived, or entitled in some manner to possess, control or dispose of either the principal or the income. Every decision relied on by the Government is readily distinguishable from the present case.

In *Lucas* v. *Earl,* 281 U. S. 111, the tax upon Mr. Earl was justified on the ground that he was the earner of the income. In *Burnet* v. *Leininger,* 285 U. S. 136, the tax was justified on the ground that the taxpayer was the owner of the corpus from which the income was derived.

In *Poe* v. *Seaborn,* 282 U. S. 101, this Court held that income which belonged to a wife under the community property laws of the state was not taxable to the husband under the Revenue Act of 1926. In saying (p. 109) that a statute should be construed to tax income to its owner "in the absence of further definition by Congress," this Court did *not* intimate, as the Government would imply, that if Congress so desired it could define as income of A something which was actually the income of B.

The present case is entirely different from *Corliss* v. *Bowers,* 281 U. S. 376, for in the latter the taxpayer, by exercising his power of revocation, could have made the income his own. By refraining from exercising it he was in effect making a series of gifts of the various items of income as they accrued. He could have decided to keep any one of them *and thus could have subjected the taxed income to the payment of the tax.*

In *Reinecke* v. *Smith* (April 10, 1933) the *ratio decidendi* was that for practical purposes the settlor of

the trust had retained a power of revocation, since the exercise of that power by him required only the association of a trustee who had no adverse interests. As Mr. Justice Roberts wrote:

> "A settlor who at every moment retains the power to repossess the corpus and enjoy the income has such a measure of control as justifies the imposition of the tax upon him."

The settlor in the case at bar retained no power to repossess either the corpus or the income for any purpose.

In *Porter* v. *Commissioner* (March 13, 1933) this Court treated as part of a man's estate certain property over which he had a power of appointment. As Mr. Justice Butler wrote:

> "Here the donor retained until his death power enough to enable him to make a complete revision of all that he had done in respect to the creation of the trust even to the extent of taking the property from the trustees and beneficiaries named and transferred it absolutely or in trust for the benefit of others."

He was very careful to distinguish *Reinecke v. Northern Trust Company,* 278 U. S. 339, where the situation was similar to that in the case at bar and (as to four trusts) the title having been put beyond the control of the settlor, the transfers were held not taxable.

The Government concedes (Brief, p. 11) that a man may escape taxation on income from property by giving it to another without reservation of benefits to himself from the use of the property, and continues "we

submit that Congress may properly say that nothing less than an outright gift will be sufficient to achieve that result."

The settlor in the case at bar did make an outright gift.

In *Marshall* v. *Commissioner,* 57 Fed. (2d) 633, cited by the Government, the gift was held ineffective because "there was not a complete relinquishment of dominion and control of the subject matter of the gift." In our case the relinquishment was complete and absolute. The question of whether a gift is outright and complete must be determined from the viewpoint of the donor, not from that of the donee. If the donor parts with all right, title, interest, power, control and domination of property, he has made a gift (unless he has made a sale). *Basket* v. *Hassell,* 107 U. S. 602. And the gift is none the less absolute and unqualified if the enjoyment by the ultimate beneficiary is postponed. If a man should sell a term for years in certain property and then convey the reversion by way of gift, would the gift be any less outright because the donee could not enjoy possession until the expiration of the term for years?[1] And could Congress constitutionally tax to the grantor the income derived by the holder of the term for years?

In *Burnet* v. *Guggenheim* (February 6, 1933), cited by the Government (p. 12), this Court held that the creation of a trust with power to revoke reserved was not an outright gift but that it did become outright on surrender of the reserve power. Accordingly, the gift became complete although the trust continued, as

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[1] Would the legal effect be different if the intervening term was for the life of the grantor instead of for years?

it does in our case. In our case all power over the properties was surrendered by Mr. Wells before the beginning of 1924.

The fact that the trust is distributable to beneficiaries at the time of the settlor's death does not, as the Government claims, render the disposition in essence testamentary. *Nichols* v. *Coolidge,* 274 U. S. 531, 540. If the settlor had created a trust to accumulate income during the life of A and then to turn the corpus and accumulated income over to B, there would be nothing testamentary in the nature of the gift. The mere fact that his own life and not the life of another measures the period of the accumulation, does not render the gift testamentary.

The Government argues that because the beneficiaries do not come into possession until the death of the settlor, the trust property could be taxed by appropriate statute as a part of Wells' estate. This is directly contrary to *Coolidge* v. *Long,* 282 U. S. 582. If the Government were right, every life insurance policy could be taxed as part of the estate of the insured. This Court, however, has held to the contrary. *Lewellyn* v. *Frick,* 268 U. S. 238.

The mere fact that certain property may be included in a man's taxable estate does not necessarily render the income from that property taxable to him during his life. For example, if property were limited to B for the life of A with a power of appointment in A to be effective upon his death, under the authorities the property over which A has power of appointment would be taxable as a part of his estate, but it is obvious that A could not be taxed during his life on the income received by B.

The present case is even clearer, however, for Mr. Wells had not even a power of appointment over the corpus of the trusts or the insurance policies.[1]

The Government says (Brief, p. 13):

> "* * * the purposes served by the trusts were Wells' purposes. The trustee performed functions prescribed by Wells and achieved results desired by Wells."

If this is to constitute a basis for taxation, then Congress may tax to the donors the income from all endowments which have been given to all our educational and charitable institutions throughout the past.

The Government continues:

> "The trusts existed because of the control which Wells had exercised over the trust property, a control that continued so long as Wells lived, for until his death the trust property here involved could be used only as he had directed."

If Mr. Wells still had any control during the taxable years, he would be properly taxable on the income for those years. But the fact that a man has once had control and has exercised it in an irrevocable manner does not render him taxable for the period of any trust he may have created in disposing of the property. It

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[1] In *Klein* v. *United States*, 283 U. S. 231, and *Tyler* v. *United States*, 281 U. S. 497, cited in the Government's footnote (p. 12) property in which a decedent held a contingent or a vested interest which terminated at the death of the decedent, was held properly taxable as part of the decedent's estate. Mr. Wells has no vested or contingent interest in either the corpus of the trust or the insurance policies.

is true that the *control continues* as long as Wells lives but Wells does not *continue to exercise the control* any more than Mr. Rockefeller continues to exercise control over the moneys he put into the Rockefeller Foundation. As long as Mr. Rockefeller lives and for many years beyond that, his endowment will be "used only as he had directed," but that does not justify Congress in taxing him and his heirs on the income of the Rockefeller Foundation as long as Mr. Rockefeller's purposes continue to be carried out.

Since the settlor had no power to revest in himself any right to any part of corpus or income, and no power of control, appointment or disposition, certainly, as Mr. Justice Butler wrote in *Coolidge* v. *Long*, 282 U. S. 582, 602:

> "The overwhelming weight of authority sustains the conclusion that the succession in the present case was complete when the deed took effect."

The Government cites *Atlantic Coast Line* v. *Daughton*, 262 U. S. 413, for the proposition that there is income in this case which Congress may tax. In that case this Court upheld an income tax to be collected out of the income itself. In our case the Government is trying to collect a tax upon income from a person who does not receive the income and cannot subject it to the tax.

One may receive income indirectly. A might render services to B with the understanding that the compensation for those services would be paid to C, and in that case it would be quite proper to tax the compensation to A as his income. Such was the case in *Old*

Colony Trust Co. v. *Commissioner,* 279 U. S. 716, and the cases of *Adams* v. *Commissioner,* 18 B. T. A. 381, and *Danforth* v. *Commissioner,* 18 B. T. A. 1221. Similarly, if A leases property to B with the understanding that part of the rent therefor will be paid to C, it is proper to tax that part of the rent to A, as in *United States* v. *Boston & Maine Railroad,* 279 U. S. 732, and *United States* v. *Mahoning Coal Railroad Co.,* 51 Fed. (2d) 208. But in all these cases the income which was paid to C was the fruit of the efforts of A or of the property of A, and none of them presents a parallel to the situation in the case at bar, where the income was the fruit of a corpus which was not the property of Mr. Wells but of the Minneapolis Trust Company, as trustee for the benefit of various persons and charities but not for the benefit of Mr. Wells.

Beginning on page 14, the Government's brief stresses an imaginary obligation on the part of Mr. Wells to provide for his dependents, and we can presume that the Government could discover a similar moral obligation to provide for the work of charitable and religious corporations. But it is immaterial whether the obligation is legal or moral or whether there is no obligation. The reason why the income represented by the taxes paid to the United States by the American Woolen Company for Mr. Wood were held to constitute income to Mr. Wood in *Old Colony Trust Company* v. *Commissioner, supra,* was not that those taxes were Mr. Wood's obligation but that they had been paid by way of compensation for his services —he was the earner of the income. The reason why the taxes paid by the Boston & Maine Railroad for the

Fitchburg Railroad were held to be income to the Fitchburg was not because they were an obligation of the Fitchburg but because they were part of the rent which the Boston & Maine was paying for the use of the Fitchburg's property. In the *Mahoning Railroad* case the taxes were paid by the lessee railroad through a mistake of law, but they were paid as part of the rent for the use of the lessor's property and for that reason constituted income to the lessor.

If A, desiring to make a gift to B, compelled by no obligation, legal or moral, renders services to C in consideration of C's paying the value thereof to B, such payment would clearly constitute income to A, *because he earned it.* But if A is indebted to B, and C, as an act of generosity, discharges that debt, the benefit to A is not in the nature of income but in the nature of a gift. The test of whether money paid by C to B for A's benefit constitutes income to A is not whether A is bound to B legally or morally but whether C makes the payment in compensation for services rendered by A or for the use of A's property.

The settlor in providing for his dependents in this manner may have felt relieved *pro tanto* of the obligation, legal or moral, to provide for them after his death, but that does not render the income from the trust his income. As far as he is concerned the situation is no different than if he had made a direct gift to the beneficiaries, with the request that they make investments which they should not disturb during his life and which would provide for them after his death.

In a footnote on page 15 the Government says that if an owner of real property should place securities in

trust for the purpose of using the income to pay his taxes, it is plain that the payment would be income to him. But suppose A placed income in trust to pay the taxes of his daughter—that would be parallel to our situation.

The Government says (p. 15) that:

> "the payment of the premiums from the trust income is a payment for the settlor's benefit as truly as if he had retained the trust property set apart for the sole purpose of paying the premiums, and himself had paid the premiums from the income of the property."

There is this great difference. If the settlor had retained the corpus of the trusts and received the income himself, he could subject a part of it to the payment of the taxes imposed on that income, but since he parted absolutely with all ownership and control over corpus and income, if this tax is assessed against him he cannot pay the tax out of the income that is taxed. And if he should happen to become bankrupt the Government (on its own theory) would be unable to collect any tax, although the income would be received by the trustee and expended for the benefit of the beneficiaries, and in justice and equity should be taxed to the trustee under section 219(b) of the Revenue Acts.[1]

The Government says (p. 16):

> "If Wells' contentions in this case are sustained he has accomplished, by indirect means, that which the law would not permit him to accomplish directly."

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[1] See Appendix, p. 36.

This argument, as well as the Government's argument to the effect that Congress enacted section 219(h) for the avowed purpose of preventing tax evasion, is very conclusively answered in a speech made by Senator David A. Reed while debating the Revenue Act of 1932 (Cong. Rec., v. 75, p. 11765):

> "It is just like a citizen who comes to a river. He finds two bridges, one a free public bridge and the other a toll bridge. He goes over the free bridge. It can not be said that he is evading the toll. He is taking the method which is not taxable, and he is not resorting to the method that is taxable. Nobody can fairly charge him with evading the tax."

cf. United States v. *Isham,* 17 Wall. 496; *Bullen* v. *Wisconsin,* 240 U. S. 625, 630; *Clapp* v. *Heiner,* 51 Fed. (2d) 224, 225.

The Government, to sustain the proposition that Congress may, if it desires, ignore separate entities and tax one's income to another, cites section 240 of the Revenue Act of 1918, which required affiliated corporations to make a consolidated return; but it is noted that the Government cites no authority for the constitutionality of that provision. Soon after its passage, taxpayers realized that the statute was to their advantage rather than to their disadvantage, so no taxpayer attacked it, and of course the Treasury Department does not question the constitutionality of Congressional statutes. The parallel sections of the Revenue Acts of 1924 and 1926 are not compulsory, and taxpayers elect to file consolidated returns only when they think it will be to their advantage.

In the cases cited by the Government on page 18: *Newman, Saunders & Co.* v. *United States,* 36 Fed. (2d) 1009; *Osburn California Corp.* v. *Welch,* 39 Fed. (2d) 41; *Perthur Holding Corp.* v. *Commissioner,* 61 Fed. (2d) 785; *Taft* v. *Bowers,* 278 U. S. 470; and *Cooper* v. *United States,* 280 U. S. 409, the courts upheld the taxation of income to the corporation or individual *who actually received it.* Those cases are in no way comparable to the case at bar.

The Government's paraphrase (pp. 18-19) of the language used by this Court in *Burnet* v. *Leininger,* 285 U. S. 136, 142, is totally unfair, for there is nothing whatever in the *Leininger* case indicating the propriety of taxing a man because his "purposes" were served. A proper paraphrase of the *Leininger* case would show the propriety of taxing trust income against the trust directly or against the beneficiaries of the trust.

The Government (p. 20) claims the same distinction between *Hoeper* v. *Tax Commission,* 284 U. S. 206, and the instant case as between the *Hoeper* case and *Reinecke* v. *Smith,* and quotes some of the language from the latter case. The *Hoeper* case would have been distinguishable from *Reinecke* v. *Smith* whether Mr. Hoeper had ever had title to his wife's property or not. In the *Hoeper* case it was held that the husband could not be taxed on the wife's income and nothing was said to indicate that the rule would be different if the husband had at one time owned the property from which that income was derived. In *Reinecke* v. *Smith* the tax was upheld on the ground of the revocability of the trusts —the power in the settlor to revest the property in himself (the necessity for consent of the trustee being re-

garded as no practical limitation on that power). It was the reserved power of revocation, and not the fact that the settlor had once been the owner of the property, which led this Court to distinguish *Reinecke* v. *Smith* from *Hoeper* v. *Tax Commission.*

(2) *This case is within the doctrine of Nichols* v. *Coolidge,* 274 U. S. 531.

In reply to the Government's second point it may be pointed out that in all the cases of revocable trusts relied on by the Government, if the taxpayer did not like the new tax he could have revoked the trusts and put himself in a position to pay the income taxes out of income from the trust property, but in our case the settlor cannot do that.

In *Nichols* v. *Coolidge,* 274 U. S. 531, 542-3, Mr. Justice McReynolds wrote:

> "And we must conclude that § 402(c) of the statute here under consideration, in so far as it required that there shall be included in the gross estate the value of property transferred by a decedent prior to its passage merely because the conveyance was intended to take effect in possession or enjoyment at or after his death, is arbitrary, capricious and amounts to confiscation."

We suggest the consideration of this language in connection with the following from *Reinecke* v. *Smith*:

> "As pointed out in *Burnet* v. *Guggenheim,* No. 283, October Term 1932, the same considerations as to ownership and control affect the power to impose a tax on the transfer of the corpus and upon the income."

The Circuit Court of Appeals seems to have anticipated this language in writing (R. 66):

> "The relation that must exist between the taxpayer and the income for which he is taxable should be no different than the relation which must exist between a decedent and the property by which a transfer or succession tax is to be measured, and the cases we have cited lead, we think, to the conclusion that the trust property under Trust No. 1 could not have been subjected on petitioner's death either to a Federal transfer tax or a State succession tax. If the trust property may not be made a part of petitioner's estate at death it is difficult to understand how the income therefrom may be part of his income during life."

and accordingly it was justified in saying (R. 65):

> "In Blodgett v. Holden, 275 U. S. 142, it was held that insofar as the Revenue Act of 1924 undertakes to impose a tax on gifts if consummated before its provisions came before Congress it is invalid under the due process clause of the fifth amendment. Even under the doctrine of the dissenting opinion in that case, reading the statute to tax gifts only that were made thereafter, there would be authority for the petitioner's position here as to this trust, which was in the nature of a gift, and was fully consummated prior to the passage of the act."

(3) *Considerations relating to the particular trusts involved in this case.*

Before the Board of Tax Appeals, the Government attempted to avoid the constitutional question only by

contending (1) that Mr. Wells was under obligation to pay the premiums on the insurance policies, and (2) that the provisions in Trusts Nos. 1, 4 and 5, that the trustee was to use the proceeds of certain insurance policies to purchase securities from the petitioner's estate, indicated a beneficial interest in the settlor. The Board of Tax Appeals accepted both of these arguments and to a large extent based its decision upon the former.[1]

In the Circuit Court of Appeals the Government conceded, as it does here, that there was no obligation on the settlor to pay the insurance premiums. And on the first argument before that court it made no attempt to avoid the constitutional question.

When the Circuit Court of Appeals certified the case to this Court the Government revived the argument made in the Board and developed a number of new arguments why the taxes on the income of these particular trusts could be justified without answering the constitutional question. After this Court dismissed the certificate, the Circuit Court of Appeals accorded the Government a rehearing on an enlarged record in order to permit it to present those questions. With the exception of one point, as to accident insurance policies, in which we concede that the Government is right, and which will result in a tax of about $100, the Circuit Court found nothing in any of the Government's arguments that convinced it.

Since the Government has seen fit to repeat those arguments in its brief to this Court it becomes necessary for us to answer them.

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[1] See last paragraph on p. 48 of record.

A.

In Trusts Nos. 1, 4 and 5 it was provided that on the death of Mr. Wells the proceeds of the insurance policies should be used to purchase securities from his estate at their "appraised value." The Government and the Board of Tax Appeals saw in this a right alleged to be of value to the settlor of his estate. The Court may recall that, on the previous argument here, when that point came up the Chief Justice inquired of the Solicitor General how he would appraise that right in determining the value of the estate—a question which was not answered.

The Circuit Court of Appeals answers the Government's contention. After quoting (R. 66) from Section 4 of Trust No. 1, the court says, *inter alia* (R. 67):

> "This provision which we are considering obviously will not enrich petitioner's estate, and is therefore to be distinguished from the situation that would exist had the proceeds of the policy been made payable to the estate. The provision merely anticipates the situation that will exist on petitioner's death, when the trustee will be in need of long-term investments in which to place the proceeds of the policies, and petitioner's estate will possibly be in need of ready cash. The trustee will be a party to the purchase, with a voice in the selection of the securities to be purchased, and as the purchase price is to be the appraised value of the securities there is no possibility by which worthless and unsalable securities will be unloaded from petitioner's estate onto the trustee by virtue of the trust provision. Possibly petitioner had such confidence in his own investments that he was moti-

vated by a desire to have the proceeds of the policy invested soundly and wisely in the interests of the trust estate. At any rate such benefit as will inure by the provision to his estate will be a convenience rather than an enrichment, and will in no way be available to petitioner while living or to his estate in bankruptcy, should he become bankrupt. How is such a future convenience to be measured, either in money or in money's worth, as a present asset of petitioner's? And to be taxable as income, benefits must above all be measurable."

B.

The Government contends that since Mr. Wells might survive all his children his estate might thereby become the beneficiary under Trust No. 4.[1] If this justifies taxing him on the trust income, it justifies taxing any father on all the income of any of his children, because he may inherit from them. The Circuit Court of Appeals answered this argument as follows (R. 80-81):

"As to the first consideration respondent argues that under the Minnesota statute a father may inherit from his children, and thus it follows that petitioner 'may ultimately receive the entire corpus of this trust, both the original corpus and the proceeds of the policies.' Now, obviously, petitioner will never inherit the proceeds payable at death on policies of insurance on his own life. And we have already considered, under Trust No. 1, the possibility that exists regardless of an express provision

[1] A similar contention is made on p. 27 as to Trust No. 5. The answer is the same as herein given with respect to Trust No. 4.

to that effect, viz, that in the event of petitioner's children all predeceasing him the trust estate may revert to him either as grantor, for want of cestui, or as heir of his children. We there held such a possibility not to constitute property in a present taxable sense, citing Coolidge v. Long and Reinecke v. Northern Trust Co., both supra, and not to constitute a present benefit in the sense of income. The same result follows here."[1]

On page 26 the Government describes the assignments of policies Nos. 181485 and 181486 of the Provident Life and Trust Company and claims (p. 27) that "the insured's estate is the beneficiary under these policies, subject perhaps to the right of the trustee to surrender them for cash."

The Government's statements as to the indorsements on the policies are correct but its conclusion is erroneous. Originally, the beneficiary named in the policies was Mary Drew Wells, with the right reserved to the insured to change the beneficiary. (R. 150, 151.) On January 29, 1921, Mr. Wells assigned all his right, title and interest in the policies to Mary Drew Wells. (R. 151.) On May 1, 1923, Mary Drew Wells retransferred everything she had taken under said assignments. (R. 152.) In June, 1923, Mr. Wells, being the owner of the policies, but not the beneficiary named therein (although he had a right to change the beneficiary) assigned the policies to the Minneapolis Trust Company as trustee. These assignments were apparently in anticipation of the dead of trust which was not

[1] The language to which the court referred back appears in the second full paragraph on p. 60 of the record.

executed until August 6, 1923. (R. 122). Possibly in executing these assignments, Mr. Wells overlooked the fact that the named beneficiary was still Mary Drew Wells, and after the deed of trust was executed on August 6, 1923, and accepted by the Minneapolis Trust Company, awakened to the fact that a change of beneficiary from Mary Drew Wells to the estate of the insured should have preceded the assignment; so this deficiency was corrected by the indorsement on August 31, 1923, that the beneficiary was revocably changed, etc. (R. 151.) It is more probable that the request for this indorsement was made at the time the assignments of June 25 were executed but the indorsement had to be made by the Company while the assignments were made by Mr. Wells. It undoubtedly took some weeks to procure the action of the Company in making the indorsement.

In any event, the principle of estoppel by deed is clearly applicable.[1] Mr. Wells assigned all his right, title and interest at a time when his ownership of the policies was imperfect; and his ownership was subsequently perfected. The assignment would operate as to the perfected ownership. The provision in the original policies (R. 150, 156), "that the interest of any

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[1] Particularly as the assignment by its terms transferred subsequently acquired rights. It says (R. 154):

> "I transfer, assign and set over unto the Minneapolis Trust Company, Trustee, * * * all my right, title and interest in the policy * * * together with all rights, privileges and benefits to be derived therefrom and from * * * any other supplementary contract that may be attached thereto * * * with the further full power and authority to receive from the company all sums whatsoever which may become payable under said policy."

beneficiary shall be subject to the right of any assignee of said policy" coupled with the assignments, directly divested Mr. Wells of any interest or ownership in the policies.

The Circuit Court of Appeals' disposition of the Government's contention appears in the central paragraph on page 80 of the record.

The Government's argument as to Provident Life Policy No. 181596 under Trust No. 5 (pp. 27-28) seems to be that Mr. Wells made an assignment which he had no right to make (because he had no property in the policy) but that he later became the owner of the policy through a change of beneficiary which he had no right to make.

If Mr. Wells had any property in the policy, he transferred it to the trustee, as in the case of the policy discussed above (p. 30). If, as the Government suggests (Brief, p. 27) Mary D. Wells was the irrevocable beneficiary, the assignment was ineffective and Mary D. Wells remains today the owner of the policy—Mr. Wells having no interest therein. If Mr. Wells acquired an interest through the death of Mary D. Wells, his interest is vested in the trustee by the assignment on June 25, 1923—equally effective whether made before or after Mr. Wells acquired the interest.

The Circuit Court of Appeals disposed of this point briefly (R. 82), saying:

> "As to all the policies the assignments were complete as regards petitioner. He retained no interest in nor control over them. This statement may be made without specifically pointing out the various

steps in the assignments of the policies and the changes and releases of beneficiaries."

C.

The Government's arguments to the effect that certain of the trusts were void under Minnesota law we considered sufficiently answered in the opinion of the Circuit Court of Appeals. (R. 71-75.)

CONCLUSION

To sum up by quoting excerpts from the opinion of the Circuit Court of Appeals:

> "Can Congress prevent a party from conveying away his property or raise up a fiction by which if he does so he will yet be treated as if he had not? (R. 61.)
>
> "* * * any attempt by a state to measure the tax on one person's property or income by reference to the property or income of another is contrary to due process of law * * *." (R. 62.)
>
> "If the trust property may not be made a part of petitioner's estate at death it is difficult to understand how the income therefrom may be part of his income during life." (R. 66.)
>
> "It is however preferable that there be some tax evasion than that rights guaranteed by the Constitution be lightly set aside." (R. 68.)
>
> "Congress may clearly tax such a transaction as that involved in the instant case for what it really is, a gift inter vivos; but so long as petitioner is willing to relinquish the advantages in order to avoid the burdens of continued ownership and effectively does so Congress may not continue to impose the burdens." (R. 68.)
>
> "We are unable to reach any other conclusion as to Trust No. 1 than that petitioner in creating the trust divorced himself from any beneficial interest in the insurance policy, that he retained no control of any kind over it nor over the corpus of the trust, and that the payment of the insurance premiums by the trustee resulted in no enrichment to him or his estate; that the income sought to be taxed to him was not his income and did not benefit him, that to tax the same to him under section

219(h) is beyond the power of Congress and violative of the Constitution." (R. 68-69.)

The decree of the Circuit Court of Appeals should be affirmed.

Respectfully submitted,

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APPENDIX

Section 219 of the Revenue Act of 1924 and Section 219 of the Revenue Act of 1926 include the following:

"(a) The tax imposed by Parts I and II of this title shall apply to the income of estates or of any kind of property held in trust, including—

"(1) Income accumulated in trust for the benefit of unborn or unascertained persons or persons with contingent interests, and income accumulated or held for future distribution under the terms of the will or trust;

"(2) Income which is to be distributed currently by the fiduciary to the beneficiaries, and income collected by a guardian of an infant which is to be held or distributed as the court may direct;

"(3) Income received by estates of deceased persons during the period of administration or settlement of the estate; and

"(4) Income which, in the discretion of the fiduciary, may be either distributed to the beneficiaries or accumulated.

"(b) Except as otherwise provided in subdivisions (g) and (h), the tax shall be computed upon the net income of the estate or trust, and shall be paid by the fiduciary. The net income of the estate or trust shall be computed in the same manner and on the same basis as provided in section 212, except that * * *

"(g) Where the grantor of a trust has, at any time during the taxable year, either alone or in conjunction with any person not a beneficiary of the trust, the power to revest in himself title to any party of the corpus of the trust, then the income of such part of the trust for such taxable year shall

be included in computing the net income of the grantor.

"(h) Where any part of the income of a trust may, in the discretion of the grantor of the trust, either alone or in conjunction with any person not a beneficiary of the trust, be distributed to the grantor or be held or accumulated for future distribution to him, or where any part of the income of a trust is or may be applied to the payment of premiums upon policies of insurance on the life of the grantor (except policies of insurance irrevocably payable for the purposes and in the manner specified in paragraph (10) of subdivision (a) of section 214), such part of the income of the trust shall be included in computing the net income of the grantor."

Section 1103 of the Revenue Act of 1924 and Section 1213 of the Revenue Act of 1926 provide:

"If any provision of this Act, or the application thereof to any person or circumstances, is held invalid, the remaiander of the Act, and the application of such provision to other persons or circumstances, shall not be affected thereby."

SUPREME COURT OF THE UNITED STATES.

No. 792.—October Term, 1932.

David Burnet, Commissioner of Internal Revenue, Petitioner, *vs.* Frederick B. Wells, Respondent.	On Writ of Certiorari to the Circuit Court of Appeals for the Eighth Circuit.

[May 29, 1933.]

Mr. Justice Cardozo delivered the opinion of the Court.

Income of a trust has been reckoned by the taxing officers of the Government as income to be attributed to the creator of the trust in so far as it has been applied to the maintenance of insurance on his life. Section 219 (h) of the Revenue Acts of 1924 and 1926 permits this to be done. The question is whether as applied to this case the acts are constitutional.

On December 30, 1922, the respondent, Frederick B. Wells, created three trusts, referred to in the record as numbers, 1, 2 and 3, and on August 6, 1923, two additional ones, numbers 4 and 5, all five being irrevocable.

By trust number 1, he assigned certain shares of stock of the par value of $100,000 to the Minneapolis Trust Company as trustee. The income of the trust was to be used to pay the annual premiums upon a policy of insurance for $100,000 on the life of the grantor. After the payment of the premiums, the excess income, if any, was to be accumulated until an amount sufficient to pay an additional annual premium had been reserved. Any additional income was, in the discretion of the trustee, to be paid to a daughter. Upon the death of the grantor, the trustee was to collect the policy, and with the proceeds was to buy securities belonging to the Wells estate amounting to $100,000 at their appraised value. The securities so purchased, which were a substitute for the cash proceeds of the policy, were to be held as part of the trust during the life of the daughter, who was to receive the income. On her death the trust was to end, and the corpus was to be divided as she might appoint by her will, and, in default of appointment or issue, to the grantor's sons.

The other trusts carried out very similar plans, though for the use of other beneficiaries. Thus, trust number 2 had in view the preservation of a policy of life insurance which was to be held

when collected for the use of one Lindstrom, said to be a kinswoman. Trust number 3 was directed to the maintenance of four policies of insurance for named beneficiaries, three of them relatives of the grantor and one a valued employee, who later became his wife. Trust number 4 kept alive seven policies of life insurance which had been taken out by the grantor for the use of sons and daughter, and three accident policies for his own use. Trust number 5 kept alive nine life policies for his sons and daughter, and two accident policies for himself. Several of the deeds made provision for contingent limitations for the benefit of charities.

The grantor in making the returns of his own income for the years 1924, 1925, and 1926, did not include any part of the income belonging to the trusts. Upon an audit of the returns the Commissioner of Internal Revenue assessed a deficiency to the extent that the income of the trusts had been applied to the payment of premiums on the policies of insurance. There was no attempt to charge against the taxpayer the whole income of the trusts, to charge him with the excess applied to other uses than the preservation of the policies. The deficiency assessment was limited to that part of the income which had kept the policies alive. The Board of Tax Appeals upheld the Commissioner. 19 B. T. A. 1213. The Circuit Court of Appeals reversed except as to the premiums on the policies of accident insurance, those policies, in the event of loss thereunder, being payable to the insured himself. As to the income applied to the maintenance of the policies of life insurance, payable, as they were, to persons other than the insured or his estate, the Court of Appeals held that an assessment could not be made against the creator of the trust without an arbitrary taking of his property in violation of the Fifth Amendment. 63 F. (2d) 425. Section 219 (h) of the Revenue Acts of 1924 and 1926, permitting such an assessment, was adjudged to be void. The court drew no distinction between the validity of the statute in its application to trusts in existence at the time of its enactment and its validity in application to trusts to be created afterwards. A writ of certiorari brings the case here.

The meaning of the statute is not doubtful, whatever may be said of its validity. "Where any part of the income of a trust is or may be applied to the payment of premiums upon policies on the life of the grantor (except policies of insurance irrevocably payable for the purposes and in the manner specified in paragraph (10) of subdivision (a) of section 214 [the exception having re-

lation to trusts for charities]), such part of the income of the trust shall be included in computing the net income of the grantor." Section 219 (h), Revenue Act of 1924, c. 234; 43 Stat. 253; 26 U. S. Code, § 960; Revenue Act of 1926, c. 27, 44 Stat. 9; 26 U. S. Code App., § 960.

The purpose of the law is disclosed by its legislative history, and indeed is clear upon the surface. When the bill which became the Revenue Act of 1924 was introduced in the House of Representatives, the Report of the Committee on Ways and Means made an explanatory statement. Referring to Section 219 (h) it said: "Trusts have been used to evade taxes by means of provisions allowing the distribution of the income to the grantor or its use for his benefit. The purpose of this subdivision of the bill is to stop this evasion." House Report, No. 179, 68th Congress, 1st Session, p. 21. There is a like statement in the Report of the Senate Committee on Finance. Senate Report, No. 398, 68th Congress, 1st Session, pp. 25, 26. By the creation of trusts, incomes had been so divided and subdivided as to withdraw from the Government the benefit of the graduated taxes and surtaxes applicable to income when concentrated in a single ownership. Like methods of evasion, or, to speak more accurately, of avoidance (Wisconsin v. *Bullen*, 240 U. S. 625, 630), had been used to diminish the transfer or succession taxes payable at death. One can read in the revisions of the revenue acts the record of the Government's endeavor to keep pace with the fertility of invention whereby taxpayers had contrived to keep the larger benefits of ownership and be relieved of the attendant burdens.

A method, much in vogue until an amendment made it worthless, was the creation of a trust with a power of revocation. This device was adopted to escape the burdens of the tax upon incomes and the tax upon estates. To neutralize the effect of the device in its application to incomes, Congress made provision by Section 219 (g) of the Revenue Act of 1924 that "where the grantor of a trust has, at any time during the taxable year, either alone or in conjunction with any person not a beneficiary of the trust, the power to revest in himself title to any part of the corpus of the trust, then the income of such part of the trust for such taxable year shall be included in computing the net income of the grantor." The validity of this provision was assailed by taxpayers. It was upheld by this court in *Corliss* v. *Bowers*, 281 U. S. 376, as applied to a trust in existence at the enactment of the statute, the power

of revocation in that case being reserved to the grantor alone, and recently, at the present term, was upheld where the power of revocation had been reserved to the grantor in conjunction with some one else. *Reinecke* v. *Smith*, — U. S. —, April 10, 1933. Cf. *Burnet* v. *Guggenheim*, 288 U. S. 280. Other amendments of the statute were directed to the trust as an instrument for the avoidance of the tax upon estates. By Section 302 (d) of the Revenue Act of 1924, the gross estate of a decedent is to be taken as including the subject of any trust which he has created during life "where the enjoyment thereof was subject at the date of his death to any change through the exercise of a power, either by the decedent alone or in conjunction with any person, to alter, amend or revoke, or where the decedent relinquished any such power in contemplation of his death, except in case of a bona fide sale for a fair consideration in money or money's worth." The validity of this provision as to trusts both past and future is no longer open to debate. *Porter* v. *Commissioner*, — U. S. —. Cf. *Reinecke* v. *Northern Trust Co.*, 278 U. S. 339; *Chase National Bank* v. *United States*, 278 U. S. 327; *Saltonstall* v. *Saltonstall*, 276 U. S. 260. Through the devices thus neutralized as well as through many others there runs a common thread of purpose. The solidarity of the family is to make it possible for the taxpayer to surrender title to another and to keep dominion for himself, or if not technical dominion, at least the substance of enjoyment. At times escape has been blocked by the resources of the judicial process without the aid of legislation. Thus, *Lucas* v. *Earl*, 281 U. S. 111, held that the salary earned by a husband was taxable to him, though he had bound himself by a valid contract to assign it to his wife. *Burnet* v. *Leininger*, 285 U. S. 136, laid down a like rule where there had been an assignment by a partner of his interest in the future profits of a partnership. *Old Colony Trust Co.* v. *Commissioner*, 279 U. S. 716, and *United States* v. *Boston & Maine Railroad Co.*, 279 U. S. 732, held that income was received by a taxpayer when pursuant to a contract a debt or other obligation was discharged by another for his benefit, the transaction being the same in substance as if the money had been paid to the debtor and then transmitted to the creditor. Cf. *United States* v. *Mahoning Coal Railroad Co.*, 51 F. (2d) 208. In these and other cases there has been a progressive endeavor by the Congress and the courts to bring about a correspondence between the legal concept of ownership and the economic realities of enjoyment or fruition. Of a piece with that endeavor is the statute now assailed.

The controversy is one as to the boundaries of legislative power. It must be dealt with in a large way, as questions of due process always are, not narrowly or pedantically, in slavery to forms or phrases. "Taxation is not so much concerned with the refinements of title as it is with the actual command over the property taxed—the actual benefit for which the tax is paid." *Corliss* v. *Bowers*, *supra*, p. 378. Cf. *Burnet* v. *Guggenheim*, *supra*, p. 283. Refinements of title have at times supplied the rule when the question has been one of construction and nothing more, a question as to the meaning of a taxing act to be read in favor of the taxpayer. Refinements of title are without controlling force when a statute, unmistakable in meaning, is assailed by a taxpayer as overpassing the bounds of reason, an exercise by the lawmakers of arbitrary power. In such circumstances the question is no longer whether the concept of ownership reflected in the statute is to be squared with the concept embodied, more or less vaguely, in common law traditions. The question is whether it is one that an enlightened legislator might act upon without affront to justice. Even administrative convenience, the practical necessities of an efficient system of taxation, will have heed and recognition within reasonable limits. *Milliken* v. *United States*, 283 U. S. 15, 24, 25; *Reinecke* v. *Smith*, *supra*. Liability does not have to rest upon the enjoyment by the taxpayer of all the privileges and benefits enjoyed by the most favored owner at a given time or place. *Corliss* v. *Bowers*, *supra*; *Reinecke* v. *Smith*, *supra*. Government in casting about for proper subjects of taxation is not confined by the traditional classification of interests or estates. It may tax not only ownership, but any right or privilege that is a constituent of ownership. *Nashville, Chattanooga & St. Louis Ry. Co.* v. *Wallace*, 288 U. S. 249, 268; *Bromley* v. *McCaughn*, 280 U. S. 124, 136. Liability may rest upon the enjoyment by the taxpayer of privileges and benefits so substantial and important as to make it reasonable and just to deal with him as if he were the owner, and to tax him on that basis. A margin must be allowed for the play of legislative judgment. To overcome this statute the taxpayer must show that in attributing to him the ownership of the income of the trusts, or something fairly to be dealt with as equivalent to ownership, the lawmakers have done a wholly arbitrary thing, have found equivalence where there was none nor anything approaching it, and laid a burden unrelated to privilege or benefit. *Purity Extract & Tonic Co.* v. *Lynch*, 226 U. S. 192, 204; *Hebe Co.* v.

Shaw, 248 U. S. 297, 303; *Milliken* v. *United States*, *supra*. The statute, as we view it, is not subject to that reproach.*

A policy of life insurance is a contract susceptible of ownership like any other chose in action. It "is not an assurance for a single year with a privilege of renewal from year to year by paying the annual premium." It is "an entire contract of assurance for life, subject to discontinuance and forfeiture for nonpayment of any of the stipulated premiums." *N. Y. Life Insurance Co.* v. *Statham*, 93 U. S. 24, 30; Vance on Insurance, pp. 260, 262, and cases there cited. One who takes out a policy on his own life, after application in his own name accepted by the company, becomes in so doing a party to a contract, though the benefits of the insurance are to accrue to some one else. *Mutual Life Insurance Co.* v. *Hurni Packing Co.*, 263 U. S. 167, 177; Vance on Insurance, pp. 90, 91 and 108. The rights and interests thereby generated do not inhere solely in those who are to receive the proceeds. They inhere also in the insured who in coöperation with the insurer has brought the contract into being. If the Minneapolis Trust Company, the trustee, were to refuse to apply the income to the preservation of the insurance, the insured might maintain a suit to hold it to its duty. If the insurer without cause were to repudiate the policies, the insured would have such an interest in the preservation of the contracts that he might maintain a suit in equity to declare them still in being. *Cohen* v. *M. L. Ins. Co.*, 50 N. Y. 610, 624; *Meyer* v. *Knickerbocker L. Ins. Co.*, 73 N. Y. 516, 524; *Fidelity National Bank* v. *Swope*, 274 U. S. 123, 132; cf. *Croker* v. *N. Y. Trust Co.*, 245 N. Y. 17, 18, 20; *Johnson Service Co.* v. *Morin, Inc.*, 253 N. Y. 417, 421; American Law Institute, Restatement of the Law of Contracts, §§ 135, 138; Williston, Contracts, §§ 358, 359. The contracts remain his, or his at least in part, though the fruits when they are gathered are to go to some one else. American Law Institute, Restatement of the Law of Contracts, *supra*.

With the aid of this analysis the path is cleared to a conclusion. Wells by the creation of these trusts did more than devote his in-

*The trusts, having been created in 1922 and 1923, were not subject to the gift tax of 1924, 43 Stat. 253, 313, c. 234 §§ 319, 320; 26 U. S. Code §§ 1131, 1132. Whether they would have been subject to that tax if they had been created at a later date is a question not before us. There is no inconsistency between a gift to take effect in enjoyment upon the death of a grantor and the reservation of benefits to be enjoyed during his life.

come to the benefit of relatives. He devoted it at the same time to the preservation of his own contracts, to the protection of an interest which he wished to keep alive. The ends to be attained must be viewed in combination. True he would have been at liberty, if the trusts had not been made, to put an end to his interest in the policies through nonpayment of the premiums, to stamp the contracts out. The chance that economic changes might force him to that choice was a motive, along with others, for the foundation of the trusts. In effect he said to the trustee that for the rest of his life he would dedicate a part of his income to the preservation of these contracts, so much did they mean for his peace of mind and happiness. Income permanently applied by the act of the taxpayer to the maintenance of contracts of insurance made in his name for the support of his dependents is income used for his benefit in such a sense and to such a degree that there is nothing arbitrary or tyrannical in taxing it as his.

Insurance for dependents is today in the thought of many a pressing social duty. Even if not a duty, it is a common item in the family budget, kept up very often at the cost of painful sacrifice, and abandoned only under dire compulsion. It will be a vain effort at persuasion to argue to the average man that a trust created by a father to pay premiums on life policies for the use of sons and daughters is not a benefit to the one who will have to pay the premiums if the policies are not to lapse. Only by closing our minds to common modes of thought, to everyday realities, shall we find it in our power to form another judgment. The case is not helped by imagining exceptional conditions in which the advantage to the creator of the trust would be slender or remote. By and large the purpose of trusts for the maintenance of policies is to make provision for dependents, or so at least the lawmakers might not unreasonably assume. Trusts to give insurance to creditors are beneficial to the grantor by reducing his indebtedness. Trusts for charities are expressly excepted from the operation of the tax. Sec. 219 (h); sec. 214 (a)(10). If other classes of life policies exist, they must be relatively few. The line of division between the rational and the arbitrary in legislation is not to be drawn with an eye to remote possibilities. What the law looks for in establishing its standards is a probability or tendency of general validity. If this is attained, the formula will serve, though there are imperfections here and there. The exceptional, if it arises, may have its special rule. *Dahnke-Walker Co.* v. *Bondurant*, 257 U. S. 282, 289.

Trusts for the preservation of policies of insurance involve a continuing exercise by the settlor of a power to direct the application of the income along predetermined channels. In this they are to be distinguished from trusts where the income of a fund, though payable to wife or kin, may be expended by the beneficiaries without restraint, may be given away or squandered, the founder of the trust doing nothing to impose his will upon the use. There is no occasion at this time to mark the applicable principle for those and other cases. The relation between the parties, the tendency of the transfer to give relief from obligations that are recognized as binding by normal men and women, will be facts to be considered. Cf. *Reinecke* v. *Smith*, *supra*, distinguishing *Hoeper* v. *Tax Commission*, 284 U. S. 206. We do not go into their bearing now. Here the use to be made of the income of the trust was subject, from first to last, to the will of the grantor announced at the beginning. A particular expense, which for millions of men and women has become a fixed charge, as it doubtless was for Wells, an expense which would have to be continued if he was to preserve a contract right, was to be met in a particular way. He might have created a blanket trust for the payment of all the items of his own and the family budget, classifying the proposed expenses by adequate description. If the transaction had taken such a form, one can hardly doubt the validity of a legislative declaration that income so applied should be deemed to be devoted to his use. Instead of shaping the transaction thus, he picked out of the total budget an item or class of items, the cost of continuing his contracts of insurance, and created a source of income to preserve them against lapse.

Congress does not play the despot in ordaining that trusts for such uses, if created in the future, shall be treated for the purpose of taxation as if the income of the trust had been retained by the grantor.

It does not play the despot in ordaining a like rule as to trusts created in the past, at all events when in so doing it does not cast the burden backward beyond the income of the current year. *Reinecke* v. *Smith*, *supra*; *Corliss* v. *Bowers*, *supra*; *Brushaber* v. *Union Pacific R. R. Co.*, 240 U. S. 1; *Cooper* v. *United States*, 280 U. S. 409, 411; *Milliken* v. *United States*, *supra*.

The judgment is

Reversed.

SUPREME COURT OF THE UNITED STATES.

No. 792.—October Term, 1932.

David Burnet, Commissioner of Internal Revenue, Petitioner, *vs.* Frederick B. Wells.	On Writ of Certiorari to the United States Circuit Court of Appeals for the Eighth Circuit.

[May 29, 1933.]

Mr. Justice Sutherland, dissenting.

Mr. Justice Van Devanter, Mr. Justice McReynolds, Mr. Justice Butler and I think otherwise.

The powers of taxation are broad, but the distinction between taxation and confiscation must still be observed. So long as the Fifth Amendment remains unrepealed and is permitted to control, Congress may not tax the property of A as the property of B, or the income of A as the income of B.

The facts here show that Wells created certain irrevocable trusts. He retained no vestige of title to, interest in, or control over, the property transferred to the trustee. The result was a present, executed, outright gift, which could then have been taxed to the settlor. *Burnet* v. *Guggenheim*, 288 U. S. 280. That the property which was the subject of the gift could never thereafter, without a change of title, be taxed to the settlor is, of course, too plain for argument. To establish the contention that the income from such property, the application of which for the benefit of others had been irrevocably fixed, is nevertheless the income of the settlor and may lawfully be taxed as his property, requires something more tangible than a purpose to perform a social duty, or the recognition of a moral claim as distinguished from a legal obligation, which, we think, is not supplied by an assumption of his desire thereby to secure his own peace of mind and happiness or relieve himself from further concern in the matter. If the trusts in question had irrevocably devoted the income to charitable purposes, to the cause of scientific research, or to the promotion of the spread of religion among the heathen, and the statute had author-

ized its taxation, probably no thoughtful person would have insisted that the relation of the settlor to the benefaction was such as constitutionally to justify the tax against him. And yet in each of these supposed cases it would not be hard to find a purpose to discharge a social duty, or unreasonable to assume the desire of the settlor thereby to enjoy the mental comfort which is supposed to follow the voluntary performance of righteous deeds.

If there be any difference between the cases supposed and the present one, it is a difference without real substance. In each the motive of the taxpayer is immaterial. The material question is, what has he done?—not, why has he done it?—however pertinent the latter query might be in a different case. Obviously, as it seems to us, the distinction to be observed is between the devotion of income to payments which the settlor is bound to make, and to those which he is free to make or not make, as he may see fit. In the former case the payments have the substantial elements of income to the settlor. In the latter, whatever may be said of the moral influence which induced the settlor to direct the payments, they are income of the trustee for the benefit of others than the settlor.

It is not accurate, we think, to say that these trusts involve the continuing exercise by the settlor of a power to direct the application of the income along predetermined channels. The exertion of power on the part of the settlor to direct such application begins and ends with the creation of the irrevocable trusts. Thereafter, the power is to be exercised automatically by the trustee under a grant which neither he nor the settlor can recall or abridge. The income, of course, is taxable, but to the trustee, not to the settlor. The well reasoned opinion of the court below, which fully sustains respondent's contention here, renders it unnecessary to discuss the matter at greater length. We think that opinion should be sustained. It finds ample support in *Hoeper* v. *Tax Commission,* 284 U. S. 206, 215; *Heiner* v. *Donnan,* 285 U. S. 312, 326; and other decisions of this court.